

Chair Prozanski, Members of the Committee, my name is Randy Cook and I am testifying in support of SB 822.

In April of 2014, I was selected for grand jury duty in Marion County and was appointed by the impanelling judge to serve as the jury foreman. As an aside, I am an attorney at a business law firm here in Salem. My specialization is in Employee Benefits & Executive Compensation, which is about as far away from criminal law as you can get and still call yourself an attorney. The reason that I agreed to testify here today is that my experience as a grand juror left me with the feeling that the system as it operates now is broken, and that recording grand jury proceedings would go a long way toward fixing it.

There were a number of things that occurred during my service on the grand jury that seemed wrong. First, we were told by several of the prosecutors who appeared before us that if we were leaning toward a "not true bill" vote at the end of our deliberations, that rather than actually return a "not true bill" we should consider just returning the indictment form to the prosecutor and let the prosecutor know where we thought the case was weak. As a result, the grand jury that I served on for several weeks did not return a single "not true bill," although several of the cases that we heard were withdrawn by the prosecutor before a vote. To be perfectly candid, that process bothered me. It felt to me like the relationship between the grand jury and the prosecutors was too cozy. I believe that if the interactions between the prosecutors and the grand jury were recorded, that sort of relationship would not develop.

The second thing that seemed wrong in the grand jury room was the nature of some of the evidence that was presented to the grand jurors. Although I have never practiced criminal law, I did take evidence in law school, and I know what hearsay is. And there was a lot of hearsay presented to the grand jurors. In fact, I remember thinking to myself that there must be some sort of exception to the hearsay rules that applies to grand jury testimony. In addition to hearsay, there was other evidence presented to the grand jury that I know from my law school days would not be admissible at trial. During one case in particular, a police officer was giving testimony to the grand jury and said at one point that the accused had offered to take a lie detector test during the investigation, but that the accused later changed his mind. The officer then smiled sheepishly at the grand jurors and said, "Oops, I guess I wasn't supposed to say that." Again, I believe that if grand jury testimony was recorded, incidents like this would be less likely to occur.

It is my understanding that several arguments have been advanced in opposition to grand jury recordings. I would like to address two of those arguments. The first is that assigning a grand juror the duty of operating a recorder would be cumbersome and would slow the process. I disagree with that. Although the grand jury that I served on heard many cases each day and sometimes had many witnesses appear per case, there were very long periods of down time between each case and between each witness. Switching out tapes or discs in between witnesses would not present any problems and would not cause delays.

A second argument that I believe has been put forward in opposition to grand jury recordings is that grand jurors may be less willing to question witnesses if they know they are being recorded. I disagree with that notion as well. The grand jurors that I served with fell into two categories: those who asked questions and those who did not. My impression was that those who did not ask any questions of any witness were simply too shy to do so. That was the case regardless of the fact that the proceedings were not being recorded. Of those who did ask questions, I find it highly unlikely that any of them would have been intimidated by the fact that a recorder was on. I know that I certainly would not have been.

Thank you.