



Legislative Testimony

Oregon Criminal Defense Lawyers Association

May 12, 2015

Representative Jeff Barker, Chair
House Judiciary Committee, Members

RE: Senate Bill 825-A

Dear Chair Barker and Members,

The Oregon Criminal Defense Lawyers Association is an organization of attorneys who represent juveniles and adults in delinquency, dependency, criminal prosecutions, appeals, civil commitment and post-conviction relief proceedings throughout the state of Oregon. Thank you for the opportunity to submit the following comments in support of Senate Bill 825-A.

1. OCDLA wishes to thank Senator Thatcher for introducing this very important bill. Currently, Oregon statutes are silent on whether the subject or “target” of grand jury proceedings has the right to testify before the grand jury. Leaving this decision to the discretion of an individual district attorney leads to varied and haphazard practice throughout the state, as some district attorneys will agree to such a request, while others will not.
2. Affording the target the right to testify before the grand jury is a best-practice and reform embraced by many organizations across the political spectrum:
 - ✓ American Bar Association Grand Jury Policy and Model Act (1977 – 1982). Principle #5 of the Model Act gives the target the right to testify before the grand jury.
 - ✓ National Association of Criminal Defense Attorneys Commission to Reform the Grand Jury. NACDL proposed a grand jury’s Bill of Rights; Bill of Right number 4 affords the target or subject of grand jury proceedings the right to testify.
 - ✓ United States Attorneys’ Manual. Section 9-11.152 notes that refusal of requests to testify “can create the appearance of unfairness,” and accordingly, “under normal circumstances, where no burden upon the grand jury or delay of its proceedings is involved, reasonable requests . . . should be given favorable

consideration, provided that such witness explicitly waives his or her privilege against self-incrimination, on the record before the grand jury, and is represented by counsel or voluntarily and knowingly appears without counsel and consents to full examination under oath.”

- ✓ Heritage Foundation. In 2003, Paul Rosenzweig, senior legal advisor for the Center for Legal and Judicial Studies at The Heritage Foundation proposed several key reforms to the grand jury, among them giving the target the right to testify before the grand jury.
- ✓ The CATO Institute. In 2003, The CATO Institute published a Policy Analysis, *The Grand Façade: How the Grand Jury Was Captured by Government*. Short of abolishing the grand jury altogether, it recommended key reforms that correct severe imbalance of power and abuses within the grand jury process.

3. The practice throughout Oregon is varied. Sometimes district attorneys will affirmatively ask, if not encourage, an attorney to present their client before the grand jury. Sometimes a district attorney will refuse a request made by defense counsel. Often a defense attorney informs the district attorney their client would like to testify, only to receive a phone call several days later stating that an indictment had already been secured. In one instance, a deputy district attorney informed the attorney that “grand jury proceedings were secret,” and she could not inform the attorney “when its proceedings were being held.”

4. It should be noted that in virtually all grand jury proceedings involving officer use of deadly force, the officer is afforded the privilege to present their testimony to the grand jury. SB 825-A would simply expand this courtesy to a “right” enjoyed by all.

4. SB 825-A is clear, succinct and simple. OCDLA again thanks Senator Thatcher for introducing it, and encourages your “aye” vote.

Thank you for your consideration of these comments. Please do not hesitate to contact me if you have any questions.

Respectfully submitted,

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