Oregon Voices
PO Box 13175
Salem, OR 97302

February 8, 2016

Senate Judiciary Committee
Sen. Floyd Prozanski, Chair
Sen. Sara Gelser
Sen. Jeff Kruse
Sen. Diane Rosenbaum
Sen. Kim Thatcher

Chairman Prozanski and members of the committee,

My name is Ken Nolley. I am a retired Willamette University professor, but I am writing here to address concerns I have about SB 1553. Those concerns arise particularly from my work with Oregon Voices—a group of Oregonians who have a family member on the sex offender registry. I want to say at the outset that I understand that SB 1553 arises out of complex circumstances. Although I come here with concerns over rights and fates of defendants if 1553 is adopted, I also share concern for the rights of victims to seek justice. Some of my former students, friends and a close family member have been such victims.

Since I have multiple and painful experiences on both sides of this issue, I am particularly concerned that we make changes with as much concern for the rights of victims and accused as possible. Thinking of justice as a set of balance scales is, after all, not an empty metaphor. Last year's changes and the changes put forward in SB 1553 have been driven by arguments emphasizing how so many states have gone further than we have in eliminating limitation statutes. Thus far, however, there has been little discussion of the context of proposed changes and the consequences that changes will have on a balanced justice system.

Oregon is unusual in two ways that have <u>not</u> been adequately discussed—ways that make the changes proposed by SB 1553 problematic if one is also seriously concerned with the rights of the accused. First, Oregon has weaker discovery rights for defendants than many other states, with the result that defendants in our state often have little information on the case against them other than the police report, limiting substantially their ability to assemble a defense for the particular charges lodged against them. The second is Oregon's non-unanimous jury system, adopted in 1934, which only requires 10 votes for a conviction. It is a system we share only with Louisiana, which adopted their system during Jim Crow in 1880.

Studies suggest that juries which require unanimous verdicts tend to proceed more carefully and to give more consideration to all of the evidence than non-unanimous juries, which have been described as more verdict driven. Perhaps that is why no other states have followed Louisiana's and Oregon's path. Their more robust discovery procedures and their unanimous verdicts provide some safeguards for the problems of stale charges that we lack.

The question of how and whether to eliminate or modify statutes of limitations rests upon the delicate balance between the genuine rights of victims to pursue redress and the rights of the accused to have a

hearing that is not unfairly hampered by the limited access to information that accompanies stale claims.

All of us here have witnessed the frustration of the multiple accusers of Bill Cosby and their inability to get a case against him into courts. Many of us may have read Jon Krakauer's *Missoula*, but if we haven't read that, we have encountered multiple accounts of campus rapes. We know that the sexual assault is much too common in our society and that in each case, a life is damaged and compromised.

But my work in the last few years has forced me to see also that while the vast majority of rape and assault accusations are undoubtedly true, some are not. Sometimes people are accused maliciously; sometimes circumstantial or limited evidence leads to the wrong person. The number of troubling cases that I have encountered in the last 7 years is much larger than I would have ever expected. And in each of those cases too, a life (and often a family) is damaged and compromised.

One case that I know of haunts me regularly. It was a sex abuse case involving an alleged single touch; the allegation was aimed at a brother-in-law in the context of bitter anger at the sister. The jury concluded that the case was very weak and voted 10-2 for acquittal. Later, the case was re-tried with increasingly doubtful evidence and with a much more restricted discovery process. The result was a 10-2 conviction that should have been made under more informed circumstances. The defendant served more than six years, and years after release is still trying to rebuild a fragile life.

The scales of justice always involve a delicate balance. Clearly and for a variety of reasons, victims of sexual abuse have been poorly served by a system that prevented them from getting their day in court. I think we should all be able to agree that we need to correct that situation. At the same time, most of the discussion last year and this year has dealt solely with how Oregon compares to other states with regard to statutes of limitations without considering the context within which those statutes exist. In our laudable effort to do more for victims' rights, we also need to do our best to avoid tilting the balance under the accused. I urge the legislature to undertake a more comprehensive and balanced reform of the system in Oregon, so that our appropriate need to see that justice is done extends to <u>all</u> of those in our judicial system.

Sincerely,

Ken Nolley
Oregon Voices