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February 4, 2016

Senator Floyd Prozanski, Chair
Senate Judiciary Committee, Members
Oregon State Legislature

Re: SB 1550 (grand jury recording)

Dear Chair Prozanski & Members,

Relevant to the effort to secure recorded grand juries in Oregon, I thought the committee should hear about a recent trial I had in Marion County which proves how utterly ineffectual it is to rely upon handwritten notes created by grand jurors.

For the last year I have been representing an individual in Marion County Circuit on two ballot measure 11 charges of sexual abuse in the first degree. The alleged victim was an 11 year old girl and my client was the new boyfriend of the biological mother. My client adamantly denied the allegation and rejected several plea offers in order to prove his innocence at trial, notwithstanding of the onerous Measure 11 sentencing consequences were he to be convicted. The allegations arose within the context of a custody dispute with the biological father, and naturally, after the allegations were made, the biological father obtained custody of the child during pendency of the trial.

Prior to trial, the court agreed to review in chambers the grand jurors' notes to determine whether there was inconsistent testimony given by the child before the grand jury. There had been. Because of these inconsistent statements, the court agreed to give copies of the notes to me two weeks prior to trial.

The notes, as per usual, were cryptic and hard to read. They did show, however, that the girl made statements before the grand jury that were inconsistent with what was contained in the police reports. The district attorney had neglected to disclose these inconsistencies to me on her own initiative, which, as you know, under authority of Brady v. Maryland she was obligated to do. Ultimately I was able to convince the court that subpoenas needed to be issued for all the grand jurors to come to trial to testify to the inconsistent statements contained in their notes.

My client waived a jury trial and was tried by the court. Six grand jurors testified on the second day of trial. What was unbelievable, and what has caused me to write you this letter, is how utterly ineffectual it was for the grand jurors to reference their own notes to remember what had been said. Even after the grand

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jurors were given copies of their own notes and I asked them to read their own words in their own handwriting, several grand jurors were still unable to remember the case let alone the exact testimony of the witnesses.

There were many other factors in the trial besides these inconsistencies, but suffice to state that the court found my client not guilty. I want to let you know of this trial, however, because it conclusively proves beyond a shadow of a doubt that handwritten notes created by grand jurors is an utterly meaningless and inadequate method of recording what a witness at the grand jury states under oath. The lives of real human beings ride on the balance of these inconsistencies, and they ought not be left to the vagaries of human limitation and error. The impact of Measure 11 and other sentencing laws are too oppressive to leave this woefully inadequate procedure in place.

Thank you for listening.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Walter J. Todd', written in black ink.

Walter J. Todd

WJT: kh