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Senate Judiciary Committee
Oregon State Legislature
Salem, Oregon

Re: SB 496- Grand Jury Recording

Dear Chair Prozanski and Members,

I have been a lawyer for twenty-one years. My office is located in Corvallis and my practice is limited to criminal defense, family law, and juvenile law. I write this letter in support of SB 496 and the recording of grand jury proceedings because justice demands transparency and accountability for people wrongly accused of a crime.

I represent a father in a custody case where the mother falsely accused him of sexually abusing their daughter. After their daughter was observed at pre-school playing a game involving nudity with another child, the mother became convinced, with no supporting evidence, that my client had taught their child the game. She made multiple reports to police and DHS beginning in the spring of 2015. Neither the police nor DHS found any evidence to corroborate her claims. At mother's insistence, my client's daughter was interviewed and/or examined by the child abuse assessment center three times during 2015 and 2016 with the same conclusion: there was no evidence that my client had abused his daughter. My client was asked to cooperate with the investigation and he did.

In early 2016, after my client moved to a different town in Benton County, the mother brought her false allegations to a new police agency. As part of their investigation, the detective directed mother to gather and keep the underwear that the child was wearing when she returned from her father's home, where she lived part of the time. Those underwear were sent to the Oregon State Crime Lab for analysis. In July 2016, my client was indicted for four counts- two each of Sodomy in the First Degree and Sexual Abuse in the First Degree. If convicted, those offenses carried a mandatory-minimum sentence of twenty-five years for each count pursuant to "Jessica's Law". My client was arrested late on a Friday night and was lodged in jail.

In June, when I learned that underwear had been sent to the crime lab, I requested the crime lab's complete file on the case. In mid-July 2016, the crime lab sent the file to the

assigned prosecutor and me, including a conversation log documenting all correspondence regarding the case.

When I learned that my client had been indicted, I was astonished. I knew, from reading the conversation log, that the OSP forensic scientist told the detective and assigned prosecutor, that any DNA results obtained from non-seminal fluid “was not probative” of whether my client had sexually abused his daughter. Put plainly, in the absence of seminal fluid (there was none), the results of their testing would not yield any evidence that would help determine whether or not my client sexually abused his daughter. The crime lab explained that because my client and his daughter lived in the same household, it was possible that any (non-seminal fluid) DNA found on the daughter’s underwear could have come from a number of sources, including transfer in the laundry.

On the Sunday after my client’s arrest, I called John Haroldson, the elected District Attorney. I explained that I thought it was impossible for my client to have been indicted for any crime involving the abuse of his daughter given the information I knew the crime lab had provided to the detective and assigned prosecutor and because there was no other evidence of abuse. Upon review and confirmation, Mr. Haroldson directed that the case against my client be dismissed and he was released from jail on Monday morning.

I was later able to confirm that the assigned prosecutor and detective simply provided the grand jury the results of the crime lab’s analysis without the accompanying explanation. In the absence of that information, the grand jury understood the crime lab results to be evidence of sexual abuse when, in fact, they were not.

My client was lucky. I had been representing him in the civil case for two years and had obtained the crime lab file prior to the Indictment, which is highly unusual. The only reason the case was immediately dismissed and my client was released from jail after just three days is because of my familiarity with the facts and circumstances of his case and I knew there was no cause to indict him.

It is typical for defendants’ accused of these types of crimes to remain incarcerated for months and possibly more than a year awaiting trial. Without grand jury recording, a client who was not as fortunate as mine would likely have spent months in jail before this evidence would have been discovered by the defense attorney, if at all.

Grand jury recordings would compel prosecutors and witnesses to provide the grand jury with ALL information they know about a case, preventing the innocent from being

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wrongfully accused or convicted. If there were mistakes made in how the evidence was presented, those mistakes would be discovered quickly by defense attorneys, with a record of the proceedings.

I thank you for your time and I urge the committee to pass this bill and to vote for transparency in our criminal justice system and the protection of the innocent.

Very truly yours,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Jennifer I. Nash