



**Testimony of Kimberly McCullough, Legislative Director
In Support of SB 496
Senate Committee on Judiciary
March 8, 2017**

Chair Prozanski and members of the Committee,

ACLU of Oregon urges your support of SB 496 for the following reasons:

SB 496 is essential to the proper functioning of grand juries in Oregon and the elimination of prosecutorial misconduct in grand jury proceedings.

Recordings of grand juries greatly improve the ability to identify and remedy prosecutorial misconduct. **Without a recording, and without disclosure of recordings to defendants, misconduct is all but impossible to correct.** Most grand jurors are unlikely to understand the complexities of the legal system enough to realize when misconduct has occurred. Even when jurors know that something went wrong, it is unlikely that they will have the motivation or understand how to remedy it. And even when a juror attempts to bring misconduct to light, they will have great difficulty proving it without more than incomplete, rushed, hand-written notes of what occurred. SB 496 will remedy this problem by requiring the recording of grand jury proceedings and their disclosure to criminal defendants.

The historical role of the grand jury reflected in the Fifth Amendment is to provide a check on prosecutorial power in the criminal justice system. Yet grand juries too often serve as no more than a rubber stamp for prosecutorial decisions. To ensure that grand juries will serve their constitutional function, and to protect individuals against abuse of the grand jury process, certain minimum procedures must be incorporated into state grand jury proceedings, including recording/transcription of grand jury proceedings and a criminal defendant's right to a record of the entire grand jury proceeding.

SB 496 will promote confidence in our judicial system by allowing disclosure of recordings when a grand jury fails to indict a public official and such disclosure is in the public interest.

Secrecy in proceedings undermines public confidence in our judicial system. This reality is particularly heightened in circumstances where secret grand juries fail to indict public officials accused of misconduct. For example, in response to grand juries' secret failing to indict police officers in the high-profile killings of unarmed citizens—Michael Brown in Missouri and Eric Garner in New York—there has been widespread criticism of the secrecy of proceedings in such cases and their value in an open, democratic society.

Many members of the public hold deep suspicions about the criminal justice system's willingness to hold public officials accountable. **Secrecy reinforces the perception that the system is rigged and leaves members of the public helpless to do anything other than speculate about what actually occurred behind closed doors.** SB 496 will allow judges to remedy this unfortunate situation by disclosing grand jury recordings in those circumstances where a public official was not indicted and the public will benefit from transparency.

We urge your support of SB 496. Please feel free to contact me with any questions or concerns. Kimberly McCullough, ACLU of Oregon, kmccullough@aclu-or.org