

To: Ohio Constitutional Modernization Commission  
Judicial Branch and Administration of Justice Committee

From: Michael T. Gmoser, Butler County Prosecuting Attorney  
And on Behalf of the Ohio Prosecuting Attorneys Association

Date: December 10, 2015

Dear Members of the Committee:

My name is Michael T. Gmoser and I am the duly elected prosecutor of Butler County, Ohio.

I am testifying today personally and on behalf of the Ohio Prosecuting Attorneys Association in support of the Ohio Grand Jury system and in opposition to any proposed changes to it.

Our Grand Jury system is rooted in the 5<sup>th</sup> Amendment of the U.S. Constitution, our Ohio Constitution- Article 1- Bill of Rights and implemented by our Ohio Rules of Criminal Procedure- Rule 6.

Through the many years of the history of our jurisprudence there has been no significant legislative modification this system, except for minor procedural changes to the Rules. Nothing, however, has changed the basic concept that the Grand Jury system as implemented is vital to the overall protection of society from excesses of governmental authority driven by what we all now call political correctness.

In a nation of approximately 321 million people, it can well be expected that untoward aberrations of any system will occur and our criminal justice system is no exception. There have been isolated instances regarding grand juries where the perception is that transparency, instead of secrecy, will better serve justice and the buzz word “transparency” is always seen as politically correct by the uninformed. What is known by

the legally informed, however, is that transparency in the grand jury system –opening the proceeding in some manner legislatively to the public- will have the opposite effect on the protections afforded to the guilty, the innocent and ultimately the public.

It is fundamental to the success of the grand jury system that it be conducted in secret and not open to public view and review. Secrecy of proceedings guarantees that the grand jury will not be influenced by outside pressures- political correctness- and guarantees that one suspected of crime with nothing more will not be subjected to public disclosure and condemnation. Secrecy is also essential when the grand jury is called upon to exercise its ability to investigate criminal activity above what it is presented from law enforcement agencies. Simply stated, there would be a chilling effect on any such investigations if those involved were open to non- professional public scrutiny.

Ultimately, the grand jury system is an essential means by which one is informed that probable cause exists that a crime has been committed and that a trial is required in a public forum with all the transparency now permitted. That venue is where the press and public should live and not in the means where a charge is made. Nothing would be gained by such modifications and much would be lost.

All of what I have said and will say on this subject can be summarized by explaining the fallacy and popular misconception that a prosecutor can indict a ham sandwich if he chooses to and concluding this must be happening. For uninformed skeptics who seek the worst in government, this resonates loudly enough to get your attention, but that is all it should get. The truth is from a current prosecutor and attorney with over 41 years of successful legal practice on both sides in a major county of this state, no prosecutor indicts cases they cannot win. All prosecutors know that any perceived gain from an

unfounded indictment is quickly buried by a failed prosecution and the negative publicity that goes with it. Thus, if you indict it, you eat it one way or the other.

In practice, prosecutors do not dictate results to grand jurors who are instructed to be independent and on occasion are fiercely independent. They, too, are aware of the popular misconceptions of their role and from my experience they strive to dispel them by following the law and not emotion or political correctness.

As with all things concerning human kind, our judicial systems are not perfect and no amount of legislative modification will achieve perfection. The point is that with the grand jury system it is as good as it can be with a proven record best left alone to work as it has for centuries in our free society.

Michael T. Gmoser  
Butler County Prosecuting Attorney