

May 23, 2017

«COMMITTEE_MEMBER»
«ADDRESS»

Re: Grand Jury

Dear «Committee_Member»,

I am writing to express my concerns to the proposed amendments to Article I, Section 10 of the Ohio Constitution. It is my understanding that The Ohio Constitutional Modernization Commission is considering adding language that would require the appointment of an independent attorney to advise members of the grand jury, as well as, providing defendants with the right to request transcripts of the testimony heard at the grand jury.

Guernsey County is admittedly a small county; its population hovers around 40,000 and the local bar association has, at any given time about, 25 active attorneys. The attorneys who practice felony level criminal defense as part of their practice is a minor fraction of that total. My office runs two sessions of grand jury a month – typically indicting around 30 cases a month or 15 per session. Barring conflicts, Defense Counsel can typically expect the Common Pleas Court to assign 3-4 cases out of each session of Grand Jury. The appointment as Independent Counsel for a single day of service would foreclose the possibility of appointment of that Attorney to any of those cases and would be catastrophic to the financial viability of their practices. Additionally, this would present the Common Pleas Court with the hardship of finding an out of county attorney to accept these appointments which has traditionally been difficult for our Common Pleas Court to accomplish due to the misperception of being a remote location.

I also see the appointment of independent counsel as both unnecessary and disruptive. As an elected Prosecutor, I have no incentive to misrepresent the law to the Grand Jury and I am subject to additional rules of professional conduct. Further, the Common Pleas Court Judge is also made available to the Grand Jury at the beginning of each session. Inserting Independent Counsel into the process is fundamentally at odds with the idea that the electorate will hold the Common Pleas Court Judge and myself responsible for the conduct

of our offices. Independent Counsels would also be subject to less regulation as no portion of the Code of Professional Conduct would specifically regulate their role at Grand Jury. Even if new rules were put in place, there would be no history and no precedent for the interpretation of such regulations.

On its face, I can appreciate the desire to ensure the criminal process is fair. But there is little to suggest Grand Juries are unfair as they currently operate. This is essentially, a process by which Ohio counties decide whether someone will be officially *accused* of a crime. Jeopardy has not yet attached and the defendants if “True Billed” should then be afforded all rights under both Ohio and Federal law to ensure their rights are protected. But until the “True Bill” is signed by the Grand Jury, those rights don’t exist because no defendant exists.

By opening the proceedings of the Grand Jury to the public through the release of transcripts, the original goals of the Grand Jury itself would be defeated. Witnesses may be discouraged from attending and cooperating with law enforcement. Witness intimidation is all too common. Releasing the transcripts would only exacerbate this problem. Release of any transcript could subject individuals to undue embarrassment within the community, especially those who are accused but ultimately not indicted; every step requesting, creating, delivering, and documenting all these steps would open these transcripts to scrutiny by the public.

The cost to a county like Guernsey would be again, catastrophic. If the right exists to request a transcript from Grand Jury then every defendant will believe that transcript is necessary to their defense and Defense Counsel, to avoid a grievance, will always request a copy. Undoubtedly, this will create new, unprecedented motions for suppression, interlocutory appeal, etc. that will overwhelm the operations of the County Courts as well as the Appellate and Supreme Courts. No precedent exists to determine how any given perceived procedural error, as evidenced by a Grand Jury transcript, would affect the rights of a defendant, nor the standard of review, nor the appropriate corrective orders. Additionally, I would expect defendants who are already convicted, will seek to overturn their convictions because this “new” right was not afforded to them.

In short, the goals of both these changes are already ensured through existing statutes, rules, and case law. Should you have any questions, please do not hesitate to contact my office.

Sincerely,

Joel Blue
Prosecuting Attorney
Guernsey County, Ohio