

Testimony on LD 453 – An Act To Require the Recording of Grand Jury Proceedings

Senator Carney, Representative Moonen and honorable members of the Joint Standing Committee on the Judiciary. My name is Stephanie Anderson and I am offering this testimony in opposition to LD 453, An Act to Require the Recording of Grand Jury Proceedings. The reason for my opposition is that the Judicial Branch personnel and prosecutors and defense attorneys are already doing way too much with way too little, and this initiative will add a burden on all three, and most significantly on the Court. Other than that, it's a fine idea.

For 28 years, I served as the District Attorney for Cumberland County. In that capacity, I oversaw 336 Grand Jury Sessions, each lasting about 4 or 5 days. With approximately 100 cases each session. That's 33,600 cases. I personally presented hundreds, if not thousands, of these cases.

Before I was District Attorney, I was a defense attorney in Cumberland County for 5 years, and I handled dozens, if not hundreds of clients who had been indicted by a Grand Jury.

Before I was a defense attorney, I was an Assistant District Attorney in Brooklyn, New York for 5 years, where I presented hundreds of cases to the grand jury. In New York, all Grand Jury proceedings were recorded.

I state all of this as my qualification to provide information on how the Grand Jury in Maine functions and what impacts a requirement to record the proceedings will likely have on it.

First, the bill requires that "all proceedings" must be recorded. Although the testimony at the public hearing on this bill was focused on testimony of witnesses, this committee should understand that the provisions of this bill go beyond that. "All proceedings" would include preliminary remarks, juror questions, and explanation of charges and instructions on the law.

Second, a court staff member (or stenographer paid for by the Court) would have to be always present during all proceedings to record them. In some counties, that will be several days per month. The court staff member would have to ensure that the words spoken are being accurately and audibly recorded, and the only way to accomplish that is to sit there and listen.

Third, all recordings will have to be verified as accurate, catalogued, and stored by the Clerk's offices.

Fourth, all recordings will have to be listened to and transcribed, again by court personnel or at the court's expense, in order for a judge to determine whether or not cause exists for the disclosure of part or all of it. (This step could be eliminated if the court agreed to discharge its responsibilities by listening to a recording rather than reading a transcript).

Fifth, every defendant, through their attorney, will ask the court for disclosure of the grand jury recording or transcript. (Failure to do so would likely result in a post-conviction review of that

attorneys representation.) The request will be by written motion, which will have to be provided to the prosecutor and processed by the Court clerk.

Sixth, this will involve an additional court action, hearing or proceeding in every case presented to the Grand Jury.

Seventh, the Court will have review the transcript (or listen to the recording) and then make a finding as to whether the transcript (or recording) should be disclosed in part, disclosed in its entirety, or not at all. And issue an order, presumably with the reasons therefore.

If the motion for disclosure is granted, copies of the transcript (or the recording) will have to be provided to the defense and to the state prosecutor.

If the motion for disclosure is granted in part, then part of the transcript (or recording) will have to be redacted by somebody.

If disclosure is granted, there may be subsequent motions, hearings, and decisions by the court as to the appropriate dissemination and/or use of the material.

It is not clear what rights, if any, the State, and the defendants would have to argue for or against disclosure, or what rights of appeal or review might ensue.

To sum up, it's a whole lot more than hitting a record button. Especially for the Court.

Stephanie Anderson
Cape Elizabeth
LD 453

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