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**TESTIMONY AND COMMENTS TO THE JUDICIAL BRANCH AND ADMINISTRATION OF
JUSTICE COMMITTEE OF THE CONSTITUTIONAL MODERNIZATION COMMISSION**

Members of the committee,

My name is Morris Murray I am the elected Prosecuting Attorney in Defiance County, Ohio. I am here today on behalf of the Ohio Prosecuting Attorneys Association.

I previously addressed this committee on the topic of Grand Jury reforms. As I mentioned in my previous comments, the Grand Jury process is a time honored and important piece of the criminal justice system not only in Ohio, but throughout the country. It was designed by our founding fathers as a check on the authority and ability of the government to prosecute persons accused of serious crimes. I previously provided some excerpts from instructions citizens receive when they are seated to serve on a Grand Jury in Ohio. Those instructions describe the purposes of the Grand Jury process and the duties imposed on those jurors. During the course of my career, now exceeding 30 years, I have come to firmly believe that grand jurors take their oath's seriously and that the Grand Jury process very effectively serves the purpose for which it was intended. The results that may come from the presentation of a case to the Grand Jury may not always be agreed with and unfortunately in high profile cases those results are often met with scorn and skepticism. But grand jurors are instructed that the standard is probable cause to believe a crime has been committed and that a particular individual may have committed that offense. If

they are not satisfied to that standard they should not return an Indictment. On the other hand, they should not forgo Indictment based on bias, prejudice, favoritism, or any other collateral influences.

Prosecutors receive investigatory files from law-enforcement agencies and review those investigations for thoroughness and make a preliminary assessment of the legal sufficiency to proceed. Keep in mind, that the statutory, ethical and professional obligation of a Prosecuting Attorney is not simply to seek conviction, but to seek justice. Like all attorneys, Prosecutors are sworn officers of the court expected to comply with the ethical considerations and disciplinary rules established to ensure that lawyers conduct themselves professionally. Prosecutors are, in fact, held to a higher standard because of the special role they play in the criminal justice process.

With these thoughts in mind, Ohio's Prosecutors have grave concerns about some of the proposals currently under consideration. Removing or diminishing the confidentiality of Grand Jury proceedings jeopardizes the original purposes. Remember that not only do Grand Jury's return Indictments, thousands of cases result in no bills or are otherwise effectively terminated by Grand Jury's thereby protecting innocent persons from being unjustly accused. Confidentiality also protects witnesses from retribution or intimidation whether cases go forward or not.

Another proposal being discussed apparently suggests the use of an advisor attorney or essentially outside counsel to provide instruction or advice to Grand Jury's. Ohio's Prosecutors are uniformly opposed to the creation of any such middleman position for a wide variety of reasons. Such a position creates another layer in the process that was never contemplated; Prosecuting Attorneys are, by the very nature of the process, expected to provide instructions of law to Grand Jury's. Prosecutors are required to present evidence that provides proof of essential

elements of criminal violations; Prosecutors must understand the rules of evidence and how available pieces of information may or may not be impacted by those rules and eventually available to a trier of fact; Prosecutors who hope to go forward to obtain a conviction have nothing to gain by presenting inadmissible evidence to a Grand Jury; likewise, Prosecutors would have nothing to gain by withholding evidence from a Grand Jury that may prove or disapprove allegations because ultimately all such information becomes available during the course of prosecuting a case following Indictment. It should be also pointed out that Grand Jury's are instructed they have the option of requesting further instruction or legal advice from the Court. Given the complexity of the process and the foregoing considerations the addition of an advisor attorney simply makes no sense, adds an unnecessary level of expense and bureaucracy, and honestly is a bit of an affront to Prosecuting Attorneys.

Ultimately, if the concern is that Prosecutors will pursue cases and seek Indictments where they should not or alternatively Prosecutors fail to prosecute cases that should be prosecuted, the use of an advisor attorney will not address those concerns. In fact, those concerns can and should be addressed by those that elect Ohio's Prosecutors.