



Ohio Prosecuting Attorneys Association

SUMMARY OF OBJECTIONS TO PROPOSALS TO AMEND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION WITH RESPECT TO THE GRAND JURY

The first proposal would require the appointment of an independent counsel to advise the grand jury. The second would require that a transcript of the grand jury testimony of any witness who appears at trial be provided to the defendant. Our general objection is that neither of these is a constitutional issue. Either could be enacted by legislation or promulgated by Supreme Court rule. Neither is of such fundamental importance that it should be included in the constitution.

Independent counsel

We see the independent counsel as both unnecessary and disruptive. The prosecutor advises the grand jury on the law, and has no incentive to misrepresent it, since the prosecutor must prosecute the resulting indictment. If the grand jury feels the need of independent advice on the law, it may consult with the judge who appointed the grand jury. Grand jurors are instructed at the outset that they have this option.

The prosecutor is a public official elected by the citizens of each county to inquire into and prosecute crimes in that jurisdiction. He or she is accountable to the electorate. The independent counsel is accountable to no one. Inserting this unelected, unaccountable independent counsel into the process is fundamentally at odds with the idea that the electorate will hold the prosecutor responsible for the conduct of the office.

In smaller counties, it might be difficult to find an attorney experienced in criminal matters who would be willing to take on this responsibility, and in all counties there is the cost issue. This could be a substantial expense for all counties.

The Attorney General and the Ohio Judicial Conference also oppose this proposal. See copies of their letters attached.

Providing transcripts to the accused

On providing transcripts of grand jury testimony to the defendants, it is essential to keep in mind that witness intimidation is not uncommon. We have even had cases where witnesses have been assaulted and murdered. Releasing transcripts could exacerbate this problem.

Knowing that transcripts of one's testimony will be released to the defendant also may discourage some witnesses from coming forward and cooperating with law enforcement. This is especially true in sexual assault and domestic violence cases.

For those who claim that this is essential for the defendant to receive a fair trial, there are other ways to address this issue. First, the prosecutor has a duty to provide to the defendant any evidence favorable to the defendant and material to guilt or punishment, as required by the Rules of Professional Conduct, Cr.R. 16, and *Brady v. Maryland*, 373 U.S. 83 (1963). Cr.R. 16 also requires the prosecutor to provide the defendant with a copy of any written or recorded statement of a witness in the state's case-in-chief, as well as a copy of any written or recorded statement of the defendant or co-defendant. If further requirements are thought necessary in this regard, the legislature and the Supreme Court have all the authority they need to address these issues.