



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

TESTIMONY IN **SUPPORT**

HB1327

Delegate J. Sandy Bartlett

Chairman Clippinger, Vice Chairwoman Atterbeary and members of the House Judiciary Committee. House Bill 1327 requires the transcription of grand jury recordings. The proponent and opponents have met several times to discuss the bill and some friendly amendments may be in order.

The state must share exculpatory evidence with a Defendant by law and without any action or request by the Defendant, ((See Brady v. Maryland, 373 U.S. 83 (1963)). The point at which the information is provided is at the discretion of the state's attorney. The determination as to what is exculpatory is also at the discretion of the state's attorney. Exculpatory evidence generally means evidence that is favorable to the Defendant in a criminal trial that exonerates the Defendant of guilt.

Grand jury deliberations and voting are secret by design. It is the point at which the state puts on its case to show that there is probable cause to move forward. The Defendant is not present at a grand jury proceeding nor is his or her attorney. There are some instances when there are no civilian witnesses and there is merely a "reader" from the police department who reads the charging documents. There are also instances when the grand jury convenes for educational purposes. Those three instances are not intended to be part of the objective of the bill and we are amenable to an amendment to make exceptions accordingly.

But when there are civilian witnesses who come before the grand jury to testify and that testimony is used to show probable cause that a crime for which the Defendant is charged was committed, the Defense should receive a transcript of the grand jury proceeding to balance justice and protection of rights. This request is not without precedent. Federal courts has required recording of grand jury proceedings for over 30 years!! Oregon records grand jury proceedings.

Recording ensures transparency and keeps accountability for the prosecution. "When government takes actions that potentially impact people's liberty, it should occur in a recorded or open forum" said a defense attorney who was President of the Oregon Criminal Defense Lawyers Association when that state's grand jury recording bill was discussed.

It makes sense to record a witness's grand jury testimony to discern whether witnesses' testimony in the grand jury matches what they say in court. If grand juries' proceedings are recorded, with the exceptions mentioned above are recorded, it may put the defense and the state on somewhat equal footing when negotiating a plea bargain. The transcript may reveal things like witnesses who contradicted other witnesses appearing before the grand jury. Such information can be useful for both the defense as well as the state. The grand jury proceeding is supposed to be part of the checks and balances system that stands between citizens and the government.

For these reasons, I ask for a favorable vote on HB1327.