

# Davidson County Grand Jury Final Report

April – June 2013

The Honorable Judge Mark Fishburn

Presented April 24, 2013

The members of the Davidson County Grand Jury submit this report at the conclusion of our three month term.

In accordance with the Tennessee Rules of Criminal Procedure, the grand jurors heard and deliberated upon 975 cases over the past three months. We presented the court with 964 True Bills and 11 No True bills. We also heard 2 presentments this term. In regard to P-1, the evidence and witness testimony proved that Martin Duncan shot Travis Massey in a manner of self defense. The Grand Jury decided that there was not enough evidence for an indictment. In regard to P-2, the D.U.I. traffic stop involving Metro Police Officer Phil Shuler, the Grand Jury decided that there was not enough evidence and recommended no further action for a criminal indictment.

Over the course of our term, we were led by Foreperson, Whit Simpson. Mr. Simpson's experience with the Grand Jury process really helped us to keep focused and move the cases in a timely manner. We appreciate his outstanding guidance and insights on the operations and polices.

The first few meetings were informative sessions from different organizations within the police force including but not limited to the Drug Task Force, Gang Unit, Domestic Violence and Child Abuse Team, Sex Crimes, Fraud Unit etc... There were also several field trips scheduled throughout our term. The field trips were essential in giving the Grand Jurors a better understanding along with an up close and personal look at our diverse and extensive judicial system. A few of the members chose to express their feelings toward some of the visited institutions that made the most impact which will be listed in the paragraphs to follow.

## RIVERBEND MAXIMUM SECURITY INSTITUTION

Serving on the Grand Jury offers opportunities to learn about the many facets of the state's correctional system. One of those opportunities included a trip to the Riverbend Maximum Security Institution. It is renowned as one of Tennessee's top and most technically advanced maximum security institutions in the state.

My preconceived notions about prison life were formed from various public media outlets. I was surprised that it wasn't what I thought. My most educational exposure was the tour of Pod 6, or "the low side". If an inmate displays good behavior for an extended period of time and in conjunction with other variables, they have the opportunity to serve their sentence on "the low side" which gives them certain daily freedoms. As we walked through Pod 6, there were no barriers between guests and inmates. Inmates were playing chess, giving haircuts, lifting weights and other daily life activities that we all do in our spare time. It was at that moment that I understood, this was their home and at this point (being incarcerated and now paying their debt to society) it wasn't about the crime they committed, but a chance for them to demonstrate they can respect rules and limitations.

We also learned there are many programs offered to inmates. They range from starting or finishing their education, help with life skills, or learning a trade. We saw the computer lab where inmates worked entering data into the traffic court systems, where they take GED classes and other educational opportunities, and the impressive carpentry and masonry work areas.

We visited death row and were surprised to learn this institution has a zero incident rating. We saw where inmates are held days prior to execution and the execution rooms. Although executions are currently on hold due to a lack of proper chemicals, the staff continues its monthly simulation drills to maintain their level of readiness using staff persons and saline solution.

After serving on the Grand Jury, I have a deeper respect for correction officers. Regardless of certain privileges and opportunities available to the inmates, they are still dangerous people who have committed serious and even deadly crimes. The officer's life and wellbeing is in constant jeopardy. It is extremely important that correction officers are compensated fairly, have sufficient training and adequate personnel to ensure public safety.

#### Suggested Recommendations

Personnel: If an officer calls in sick or is on vacation, maybe there can be an "on call" list to maintain the proper level of staffing.

Salary review: These officers risk daily dangers just like Metro Police officers. Their salary should be comparable to police officers.

Additions: It would be very educational and of interest to tour the Women's prison and the Mental Health facility.

#### DC4- Drug Court

On Friday, April 19, 2013, the Grand Jury members were taken on a most enlightening tour of Davidson County Drug Court. When I arrived, I was greeted by a neatly dressed and courteous young man who escorted me to a conference room. I assumed he was member of the facility staff.

Once gathered and seated, Director Janet Hobson gave us an overview of Drug Court--what it is, how it's run, how and why it came to be and who participates in the program. As part of her educational address to us, she announced that we would hear testimonials from three of the incarcerated residents of the fenceless grounds. You can imagine my surprise when one of the three volunteers that entered the room turned out to be the young man who had greeted me upon my arrival.

He told us about his former life of meth addiction and addiction to making meth. He explained that he had been incarcerated at the prison facility but had not been able to stop using drugs while there and had returned to his destructive habits and friends upon release. Drug court, he told us, had provided a supervised structure in which he was able to get sober; the programs helped him discover his talents and realize his potential outside of meth culture. He now has hope and a determination to be useful and productive in society.

We were taken on a tour of the facility, divided into three groups, each guided by one of the three residents who'd told us a common story of a life destroyed by drug addiction; each one had described how Drug Court changed their lives by providing a supervised, drug-free environment with programs to help restore their self-esteem. It was wonderful to witness their pride in the facility and themselves.

Afterward, we reconvened to the conference room where Judge Seth Norman joined us to give his account of the history of the 16-year-old Drug Court-- his pride and joy. The inpatient program is one of only four in the nation and can boast a recidivism rate that is far lower than that of the prison system. According to Judge Norman, the Drug Court has saved Davidson County approximately \$29 million in its existence as an alternative to conventional incarceration. He told us of plans for expansion, an annex to the Bristol facility in Morgan County. Following his discussion, we were treated to a lunch served by more of the facility's residents.

We came away impressed by the Davidson County Drug Court inpatient program -- a two-year, highly-supervised, structured program based on an honor system of commitments, achievements and rewards. We are grateful for the vision Judge Norman fought for 16 years ago to help thwart the revolving-door of repeat drug offenders he saw coming through his court. In our charge as Grand Jury members, we witness other revolving-door crimes against our community. It would be encouraging if a similar program could be considered, developed and hopefully implemented to protect us from the habitual driving violation offenders, the repeat DUI offenders and the habitual shoplifters, just to name a few.

#### Metro Police Academy

On Friday, May 3, 2013, the Davidson Co. Grand Jury visited the Metro Police Academy.

We had presentations given by three police officers. Each officer was extremely professional, self-assured and knowledgeable. They gave an overview of the selection, requirements, and training processes.

Probably the gunsmith gave the most popular segment. He answered many gun-related questions. The gun display rack generated both questions and many pictures.

In summary, the visit was received positively by the jurors. On a personal note, I was impressed by the careers available in law enforcement and recommended that career path to my 10-year-old grandson.

#### Juvenile Court of Davidson County

This Grand Jury would like to commend Judge Sophia Brown Crawford and all the hard work she and her seven Magistrates accomplish at the Juvenile Court.

Mr. David Smith, Juvenile Court Clerk, does an excellent job in keeping all the court's legal documents, records, and paper work in order.

Mr. Pat Curran, Superintendent of the Juvenile Detention Center also does an excellent job, however he has been hampered for the past few months by the loss of 25% of his detention capacity with the uninhabitable Pod B due to water and structural damage. This problem was caused by a leaking roof which has allowed rain water to accumulate on the Pod floor. As a result the tile floor has been damaged and possibly allowed hazardous mold to grow in the Pod. We strongly recommend that this roof leak be repaired as soon as possible in order to return the Davidson County Juvenile Detention Center to its full design capacity of 4 working Pods.

#### Police Ride – Along

As members of the grand jury we are very thankful for the opportunity to do a ride-along with officers in our respective precincts. This opportunity offered a very revealing look behind the scenes of our community and helped to frame some of the details that go into the prosecution of law breakers and offenders.

Throughout the course of our grand jury term we encountered a variety of terms and techniques used by the police to enforce laws and collect intelligence. Gaining a firsthand experience with some of these techniques helped to guide our thought process when considering various details about cases.

Through internal discussion about our experience it became very apparent that we all had our own unique experiences while on ride along. Some spent a majority of time with DUI's while others focused on floating or investigating run away children. The stories that each member was able to contribute were a mixture of educating and entertaining.

The ride-along experience seemed to be a mutually beneficial experience as it allowed our assigned officers to learn more about the grand jury and its function. It's our belief that this is important as it helps officers understand our informational needs when presenting a case at a grand jury level.

I would like to suggest that in future grand jury sessions that the ride along component occur earlier in the term – perhaps near the beginning of term – in order to help grand jury members become more familiar with law enforcement.

#### Presentments

I decided to start the coverage of presentments with the definition. A PRESENTMENT, (Burton's Legal Thesaurus) is "the written notice taken by a grand jury of any offence, from their own knowledge or observation, without any bill of indictment laid before them at the suit of the government; 4 Bl. Com. 301; upon such presentment, when 'proper, the officer employed to prosecute, afterwards frames a till of indictment, which is then sent to the grand jury, and they find it to be a true bill. In an extended sense presentments include not only what is properly so called, but also inquisitions of office, and indictments found by a grand jury".

I started with the term because "without any bill of indictment and the possible till of indictment are very important factors. During our term we were allowed to explore and deliberate on two cases in presentment fashion. There were no official indictments and we as the grand jury listened to all the compelling evidence and made a decision on whether to have indictments drafted or not. Interestingly enough one of the cases involved a metro police officer and possible misconduct. I think overall the fact that the grand jury was afforded the opportunity to make such a decision in this type of case impressed us. Many of the members started on April 1, with the mindset that the "good ole boy system" was still very much a huge part of the judicial/legislative/police systems; but through the term with many of the cases and particularly the above referenced presentment. We have all changed our ways of thinking.

#### Legislative issues/ concerns

I am concerned with the several cases that presented themselves to us during this term where a newborn infant was found with maternally derived abused drugs in the infant's system, or their effects, either clinically, or in the infant's stool. The fact that the mother ingested these drugs, either early on or just prior to delivery (often admitted by the mom), was brought to the Grand Jury as cases of 'casual possession and use of controlled substances', charged against the mom, but without any consideration of

abuse/neglect toward the child (fetus, when still in the womb). This created a sense of wonderment at the Grand Jury level, to say the least. In inquiring the assistance of the District Attorney's office as to the reasons behind this kind of charge, but without abuse or neglect included, we were informed that this issue was a 'hot button', as it were, in the legislature, often bantered back and forth by pro-choice and pro-life factions, often without a clear logic for either side when the grand scheme of the issue was pondered at the Grand Jury level.

Perhaps again as a biased observer, as a pediatrician, this state of affairs is striking to me. Again, the issue that I and others on the Grand Jury have with the current legislative stance is, regardless of the moral/ethical issues on both sides of the abortion debate:

*If we can rescue babies (fetuses when in the womb) from, say, 28 weeks on in the neonatal intensive care units around this city, with regularity, and with reasonable outcomes, then how can you not protect them from the 'abuse' and/or 'neglect' that is being inflicted on them by drug abusing moms before they are delivered?*

Think about this scenario:

*A mom takes cocaine three hours before delivery, in her mind to 'assist herself with handling her labor', and the baby has clinical effects of this (or even does not, but with cocaine found in the infant's first stools, thus being maternally derived). What is the 'probable cause' charge? The mom is only charged with 'casual possession and use of a controlled substance'.*

*Three to four hours later, mom sneaks some cocaine into her newborn's first bottle to counter what she fears will be cocaine withdrawal in the infant. The child has clinical symptoms (or even does not). The mother is observed putting something in the bottle. The bottle is tested and is positive for cocaine, and mom admits to her act. And what will be the 'probable cause' charge? Child abuse.*

Dear legislature, what cannot you see here? Medically, the 'fetus' before birth and the 'child' after birth, if that is the issue, are the same, and the distinction, causing legal hair splitting, seems so artificial. If legal protection is the issue, please protect the fetus, as well.

#### Process Issues

As a generality, I am impressed with the Grand Jury processes and procedures. There are, however, times when such processes seem inefficient and perhaps even redundant to the outsider. In my experience in my work life, the longer policies and procedures were in place, especially without review, the more unthinking and inefficiently applied they may become. I chalk this up to human nature. Sometimes, a fresh set of eyes helps to see some of those inefficiencies.

Being a 'new kid on the block', as a Grand Juror for just 2.5 months, there are things that go on in the Grand Jury process that seem at least cumbersome, if not inefficient and/or redundant. Please take this as constructive criticism and without anyone in mind. As I have told others in other venues, "If one is busy, try not to squeeze 2.5 hours of work into 4 hours." What follows are observations with suggestions.

1. CONFESSED CASES: I understand that there are different levels of evidential decision-making, legally. The Grand Jury is at perhaps the least requiring level, that of 'probable cause'. Then there is 'a

preponderance of the evidence' (civil court), followed by 'beyond a reasonable doubt', at the Pettit Jury level. May I suggest that there is a further, higher level – That of a confession to the charge by the suspect. The question of inefficiency here is this: Why do we at the Grand Jury level of 'probable cause' need to hear in detail the evidence in cases where there is a confession to the crime, and to the charges in question, by the suspect? This happens commonly, perhaps 5-10 cases in a full 30-40 case load per Grand Jury session or more (I have been tracking this over the past several sessions, and hence the above data) ranging from DUI's, driving on a suspended driver's license, driving on a revoked driver's license, CMVO's, *many* of the loss prevention presentations, and even burglaries, robberies, and even one murder case (a 'cold case', where the case was solved by a man who confessed on his 'near death' bed as to his doing the crime, with the knowledge of facts that could be only known by the murderer.) Suggestion: simply group the confessed cases together and present them as such, or just announce beforehand with each case with a confession that a confession exists with this case. (I personally have questions as to why a Grand Jury, with 'probable cause' as the baseline goal, *even has to hear* a *confessed* criminal case, but I suspect that legal 'due process' requires that 'each' case, regardless, be heard. This is just my attempt to streamline the process. Thanks for listening.)

2. "SLAM-DUNK" CASES: Over the course of the Grand Jury season, there have been notable, repetitive, common types of cases in which, once a simple, and predictable, *sequence of evidence* was presented, then there was 100%, unanimous agreement as to 'probable cause'. These involve:

a. DUI/DUI PER SE CASES: evidence sequence...

1. Clinical impairment by observation? → yes...
2. Field sobriety test? → Failed, or refused...
3. Breath or blood test? → Failed, or refused implied consent...

If this evidence sequence was in place, then the cases were 'slam dunks'.

B. SUSPENDED OR REVOKED DRIVER'S LICENSE: evidence sequence...

1. Driver pulled over for whatever → ...
2. License investigated, Driver's license suspended or revoked? → Yes

If this evidence sequence was in place, then the cases were 'slam dunks'.

C. CMVO's: evidence sequence...

1. Driver pulled over for whatever → ...
2. License investigated, and found to be chronic motor vehicle offender...

If this evidence sequence was in place, then the cases were 'slam dunks'.

D. SEX OFFENDER REGISTRY VIOLATIONS: evidence sequence...

1. Suspect is on the sex offender's registry? → yes...

2. Sex offender violates the conditions of his registry inclusion? → yes...

If this evidence sequence was in place, then the cases were 'slam dunks'.

Suggestion(s): All of these categories of cases could be presented by category on a separate (excel?) spread sheet with the suspect's name, and each evidence piece in the sequence, and if all in place, then the group could be voted on as a block, with questions asked if any Juror had any. For example:

DUI/DUI PER SE cases:

<u>Suspect's name</u>	<u>Clinical impairment?</u>	<u>Field Sobriety test?</u>	<u>Breath/Blood test?</u>
Don Smith	yes	failed	>0.08
Joe Jones	yes	refused	>0.08
Mary Lacy	yes	failed	refused
Tom Grassland	yes	refused	refused

Etc.

"Any questions"" If yes, then they are answered. If no, then the group is voted on as a block of cases, similar to grouped plea bargain cases at the Pettit Jury level.

A similar excel spread sheet could be produced for the other categories as noted above, but I think the above 'mock' excel spreadsheet example in this doc.x format should suffice for understanding what I am talking about. It even might be more efficient to devote Mondays to DUI/DUI PER SE cases, Tuesday to SUSPENDED/REVOKED DRIVER LICENSES and CMVO cases, and Friday to SEX OFFENDER REGISTRY VIOLATIONS, so that only one excel spread sheet need be produced per Grand Jury Session per week.

Child Abuse and Neglect

I have been asked to contribute comments regarding issues relating to cases involving child abuse and neglect.

In general, it is my view, as a pediatrician, that the cases brought before the Grand Jury was in every case appropriate and sobering. In general, those that presented those cases did a very creditable job, such that the facts of the cases spoke for themselves, relative to probable cause that a crime was committed, the accuracy of the stated counts to be considered, and that the suspect in question probably committed the crime.

I do, however, take some issue with:

2. The depth of facts gathered and presented, at times.

As a provider on the identification side of the abuse/neglect issue, when children were brought into my office, either to be examined for abuse/neglect, or found to be suspicious for abuse/neglect by me

but unaware to the parent/guardian present at the time, I have found that what I observed was not always what could be discovered on further evaluation.

It was always disturbing to me, for example, that a child might have bruise patterns that were suspicious, and therefore reportable by legal requirement, but on further, radiologic examination were also found to have fractures in various stages of healing, implying that what I suspected to be abuse/neglect on an acute basis, was in fact only a single event in a much longer trail of abuse and neglect. The point is abuse or neglect is not always obvious. Other examples of this point could be given.

The issue for me, as a Grand Jury member this term, is that there were several cases where the investigation was in my view superficial. For example, bruises from a 'whipping' were noted on the back, upper thighs, arms, shins, hands and head in a child, done by a male caretaker, with a history of prior care by that caretaker, but no one pursued the case to evaluate for occult injury, or other organ dysfunction. The point to me is that, while 'probable cause' for an acute event was presented, the potential for a case of chronic abuse/neglect was potentially missed, and the outcome, therefore, put in jeopardy. That is, an act of acute abuse, perhaps in a sudden 'rage' event, might be dismissed with a lighter sentence, even probation and the proverbial 'slap on the wrist' (if the assailant showed appropriate remorse), but if the case were shown to be more extensive and chronic, then the 'beyond a reasonable doubt' conclusion, and sentence, would have been much different, and justifiable, in my view.

Child abuse/neglect is often the most disturbing kind of case with which a Grand Jury or Pettit Jury will ever deal, precisely because the child is at the mercy of and dependent upon the abusing caregiver. It is precisely because of this that each case need be pursued to be sure that the child has 'his/her day in court'. I accept that money, time, and resources are stretched thin in protective services, and I can personally relate to the disruption in an office that any of these cases brings to a day's schedule. I suspect that this is one of the reasons why the legislature made it a legal requirement that any practitioner's license is on the line for not reporting – to make sure no suspicion goes uninvestigated. If so, then my plea is to do the investigation.

2. The other issue to me involves the occasional lack of medical records at the Grand Jury to review. In one case, it was precisely the opportunity to review the ER and medical record of injuries that allowed for a clearer understanding of the injuries inflicted and that they could not be considered accidental, when some on the Grand Jury, in a desire to not rush to judgment, questioned whether these bruises might have been 'accidental'. We did not have the medical files on every case, and while I do not feel in every case that they were absolutely needed to justify the 'probable cause' standard, they should be a requirement for presentation, in the event that they are needed.

### In Conclusion

As law-abiding citizens, we often take our safety and security for granted. It's so easy as ordinary citizens to pass judgment on members of law enforcement and government officials based on what we see on television or hear through the numerous different media outlets. It is the consensus of the members of this Grand Jury that it has been an honor and privilege to serve our fellow citizens in this capacity. We humbly express our appreciation and thanks. We all believe we now possess a working knowledge of our judicial system that would not have been possible without this wonderful experience. We leave with a positive outlook on our judicial system and have an enormous amount of respect for our police force. We

extend our sincere appreciation and gratitude for what you endure on our behalf day in and out. Last but not least, this Grand Jury report for 2Q 2013 would not be complete without recognizing the excellent staff support provided by the Davidson County District Attorney Torry Johnson. Without this staff's legal knowledge, and daily support, we could not have heard 975 cases this quarter. Especially helpful to the Grand Jury were:

Assistant District Attorneys Michaela Matthews, Kathy Morante, Karen Fentress, and Rodney Faulk

DA Office Support Manager Sonya Newbell

DA Case presenter Sgt. David "Standby" Liles

DA Daily case organizer Lori "the Boss" Hooberry

DA Case presenter Sgt. Robert "DUI Rob" Bandish

Court Officer Stephen "the Bodyguard" Hawkins

Thank You to ALL from YOUR Grand Jury

Grand Jurors: April 1, 2013 – June 28, 2013 2Q

Foreman: Edward Whit Simpson

Whit Simpson

Kelly Lockridge Kelly Lockridge Douglas Henry Douglas Henry

Thalia Ewing Thalia Ewing Kathryn Covington Kathryn Covington

Vicky Bibbs Vicky M Bibbs Mary Hattan Mary Hattan

Brenda Maxwell Brenda Maxwell Timothy Cope Timothy Cope

Michael Stanton Michael A. Stanton Yvette Tisdale Yvette M. Tisdale

Marcia Liggins Marcia Liggins Joseph Tharpe Sr. Joseph Tharpe Sr.

Jonathan Walker Jonathan Walker Jose Hernandez Jose Hernandez

Jan McKeel