

**Final Report of the Grand Jury
July Term, 1994
to
The Honorable Ann Lacy Johns, Judge
Criminal Court Division III
Davidson County, Tennessee**

During the July term, the Grand Jury met fewer days than any other previous Grand Jury. Meeting only two days a week, the Grand Jury heard a total of 611 cases involving crimes ranging from shoplifting to criminal homicide.

The Grand Jury made several field trips during its term and talked to numerous officials including Judge Philip Sadler, Sheriff Gail Ray, Police Chief Robert Kirschner, Judge Andy Shookhoff, Chairman of the State Parole Board Charles Traughber and Deputy State Attorney General Gordon Smith.

The Grand Jury is concerned about several topics, each of which is an integral part of the Criminal Justice System. This report takes a close look at these topics and makes recommendations that it believes will improve the system.

CAPITAL PUNISHMENT

The Grand Jury as other Grand Juries in the past are unanimous in it's support of the death penalty as a deterrent to Criminal Homicide.

If the death penalty is the State speaking for the victim, then as it stands now, the victim is silent. No death row inmate has been executed in the State of Tennessee since 1960. Currently there are 103 prisoners on death row.

Every appeal that delays the execution of the sentence as directed by the Judge or Jury is a slap in the victims' families face. They continue to suffer from the loss of their loved one and the reopening of wounds every time the appeal process starts; which in some cases last years.

This is apparent just recently when Judge Nixon threw out the 1975 conviction

of Ronald Rickman who is on death row for raping, stabbing and the bludgeoning death of Deborah Lee Groseclose. Judge Nixon also earlier this year overturned the murder conviction of Richard Houston.

The Grand Jury called Judge Nixon's office and asked that he appear before them. His reply to the Grand Jury was "no comment."

The victims and their families receive nothing in retribution. This Grand Jury feels this should be reversed. There should be a form of compensation to the victims. If we consider the death penalty as cruel and unusual punishment and in violation of the Eighth Amendment to the Constitution for the criminal, is it not cruel and unusual punishment for the families to suffer throughout all the appeals?

Our present court system follows a lengthy appeals process of 11 or more steps. It is not uncommon that after years of appeals the process starts again.

Who supports the cost other than you the taxpayer. It is estimated that the cost for appeals total hundreds of thousands of dollars in legal costs. This cost does not include housing, medical treatment and supportive care for the death row inmate.

How do other states continue to execute death row inmates if we are all under the same federal justice system?

It is time that the general public takes a stand and petitions the politicians on the state and federal level. Call or write the congressmen who say they support the death penalty but do nothing to change the lengthy process. If the politicians won't listen, get their attention at the polls.

The public must stay aware of the cases being reviewed at the state and federal level. We must press the State Attorney General to report on cases that are being delayed at the federal level.

BONDS

The Grand Jury has been reminded on several occasions that a bond is not to be

a deterrent to crime, but a guarantee that the suspect will appear in court. From the testimony heard, it is apparent that bonds do not serve as a deterrent for repeat offenders, nor is this the underlying problem with the setting of bonds.

The most startling realization is the inequity and inconsistency of bond setting. The bonds seem to fluctuate at the whim of the Night Court Commissioners and are erratically reduced at bond hearings by General Sessions Judges. Why should the citizens of our community risk exposure to repeat offenders? The setting of low bonds in some cases and high bonds in others is so inconsistent that questions must be raised to the standard on which bonds are set. The Grand Jury heard one case where a defendant charged with eleven (11) counts of sexually molesting a child had his bond reduced from \$100,000.00 to \$1,000.00. Yes, it happened on a Saturday.

As defendants await their day in court, should they appear, they are afforded the freedom to commit similar or more heinous offenses. The Grand Jury heard four separate indictments against a defendant accused of auto theft while awaiting his first court date. Had that person been in jail on the first offense, the three other vehicles would not have been stolen. And these are the only times that the Grand Jury knows that this person has been arrested.

The Grand Jury's impression is that stricter guidelines need to be drawn in setting bonds. It is also the opinion of the Grand Jury that prior to setting bond on a parolee, an immediate consultation with the parole officer needs to occur. The Grand Jury does not question the right of the accused to make bond, but it cannot understand how criminals with a long list of convictions are allowed to return to a life of crime so quickly. There should be some cooperation between probation officers and the police department as to parole violations. The police department booking room should be able to tell in an instant if a person is out on parole or in violation of their parole.

Therefore, the Grand Jury recommends:

1. That the Night Court Commissioners develop a guideline to

ensure consistent administration of bonds, set to restrain as well as guarantee appearance in court.

2. That the guideline uses a sliding scale, based on the severity of the crime, the accused's prior criminal history, and the potential posed threat to the community be considered in the setting of bonds.
3. That bond reduction hearings on Saturdays be eliminated. While the Grand Jury realizes that jail overcrowding has prompted that immediate measures be taken to release some of those incarcerated, those in jail are aware that bonds can be reduced and do not fear jail time.
4. That the Metropolitan Police Department be given immediate access to parole records and know immediately when violators are arrested for a crime.

PAROLE BOARD

The Grand Jury is interested in the parole system and the effect it has on the safety and well being of the people of Davidson County. We interviewed Mr. Charles Traughber, Chairman of the State of Tennessee Board of Paroles. Mr. Traughber gave us an in-depth report on the parole system and its place in the Criminal Justice System.

Mr. Traughber gave the Grand Jury an overview of the problems created by the enactment of T.C.A. § 41-1-501, "Safety Valve" or "Early Release" Statute. He pointed out how the parole board complied with the statute in order to reduce the prison population as required by the federal court's order to provide for a prisoner's civil rights. It was noted that only some classes of felons could be considered for early release as directed by the Governor of the State of Tennessee. During the period of 1989 through June 1993, paroles granted increased to a total of 11,560. Since that time, paroles have

decreased to 9, 665 in August of 1994. Prisons are currently being reported at almost 100% capacity housing 12, 585 prisoners. The problem arising from this is that more prisoners are going to have to be released and put back with the general population in order to make room for new prisoners entering the prison system.

The Grand Jury makes the following recommendations that should help the criminal justice system with paroles and the dumping of felons on the general population as a result of continued early release. These are:

1. The chapter of the Tennessee Criminal Statute known as the "Tennessee Criminal Sentencing Reform Act of 1989", should be revised in its entirety. Specific recommendations relating thereto are depicted elsewhere in this report. The system needs a sentencing system that is certain and one that people can understand.
2. Revise Section 39-13-206, Appeal and Review of Death Sentence to eliminate the right of direct appeal from the trial court to the Court of Criminal Appeals.
3. Mandate that a complete educational program be implemented.
4. Repeal T.C.A. § 41-1-501, "Safety Valve" or "Early Release" statute. Prisons should be at 100% before "Safety Valve" takes effect.

There are two other programs that are being initiated by the State Board of Paroles. These are (1) an I.D. program that identifies the parolee and the offense committed. He is required to have this in his possession at all times and (2) electronic monitoring of parolees. The Grand Jury feels that these two programs should be implemented as soon as possible. These are tools that could assist the Metropolitan Police Department in providing for the safety and well being of the general population.

STATE AND LOCAL FACILITIES

During our term as the Davidson County Criminal Grand Jury, we have heard on several occasions that the correctional facilities in Nashville are overcrowded. We visited three detention facilities during our term; River Bend, CCA, and the new Juvenile Detention Facility. Upon further research of the overcrowding problem, we have found that many factors come into play. The Metro and State Correctional Facilities are under federal court orders mandating the conditions, classifications of inmates, housing assignments, population capacities and other rulings too numerous to list to provide safe and humane housing for inmates.

Approximately one-half of the Metro jail's capacity is made up of pre-trial felons bound over to the Grand Jury. These cases on average are bound over anywhere from six months to a year. Another factor contributing to the overcrowding of correctional facilities is the housing of illegal aliens; the Immigration Naturalization Service requires that when an illegal alien is arrested they be housed in local facilities rather than be deported. Why is this? It seems that it is harder to get out of our country than to get in.

The Grand Jury's recommendations concerning the overcrowding of Metropolitan Government detention facilities:

1. The cases be expedited after an arrest is made to insure long delays are eliminated. The District Attorney's Office should make every effort to eliminate the frivolous continuances by a defendant at General Sessions Court. The District Attorney should further insure these cases are promptly presented to the Grand Jury for consideration.
2. The automatic deportation of incarcerated illegal aliens, and

that funds should be provided by the Department of Immigration and Naturalization to house these inmates, while in Metropolitan Government custody.

3. That military style boot camps be established for convicted felons of one to six years, especially for younger criminals. This should be aimed at drug offenders who should be required to participate in a fourteen month program, similar to the Lifeline program at CCA.

JUVENILES

The Grand Jury visited Nashville Davidson County Juvenile Court. We observed that the new facility was built because of safety reasons. The cost of the new facility was approximately 12 million dollars.

The budget for this facility is approximately 4 million dollars with additional federal aid of approximately \$200,000.00 to \$300,000.00 dollars. It cost \$110.00 a day to provide care for each juvenile.

Grand Jury feels that home detention monitors are efficient in some incidents but only with the strict help and support of the parents.

We feel that the juveniles have no respect for the court systems. We also feel that discipline and respect should be instilled in our children at home, not waiting for our school systems to teach them. Many parents have turned their children over to local government systems with little or no responsibility in the home.

The Grand Jury feels that the Juvenile Court Judge places a greater emphasis on rehabilitation rather than punishment. Grand Jury also feels some form of strict punishment should be an integral part of any form of rehabilitation.

Children should not be suspended from school, this is not a deterrent to crime.

They should have to make this time up on Saturdays.

The Truancy Department should enforce current truancy laws to keep children in school with the support of parents and local authorities.

As members of the Grand Jury, we feel that children need mentors to whom they can look up to and learn respect, discipline and self-esteem. They need one-on-one supervision to become productive members of society. They need to understand, you must pursue your goals with education, self-respect and respect of law enforcement.

DOMESTIC VIOLENCE AND CHILD ABUSE

The July Term of the Grand Jury heard many cases involving domestic violence and child abuse.

We commend the Mayor and the Metropolitan Police Department for their concern for the welfare of our citizens by forming a Domestic Violence Unit within the Police Department. Domestic Violence is at the forefront with the publicity surrounding the high-profile case of O.J. Simpson. On August 1, 1994, the Metropolitan Police Department's Domestic Violence Unit officially began their work under the direction of Captain Shirley Davis. The Grand Jury is proud of this accomplishment. Domestic Violence related cases presented to the Grand Jury included cases of assault, stalking and harassment.

With the formation of the Domestic Violence Unit, quick action taken can avert any further injury, abuse or death in these cases. The Metropolitan Police Department's General Order concerning the handling of domestic violence calls, dated January 5, 1990, calls attention to the importance of answering domestic violence calls promptly. It gives responding officers the opportunity to initiate prosecution and make arrests, when appropriate. The order also states the responsibilities of responding officers at the scene of a domestic violence call pertaining to the protection and advisement of victims. The order gives officers the prerogative to make decisions on the scene of a domestic call

concerning the welfare of those victims.

The Grand Jury heard stalking cases where the victims, all women, feared the person stalking them to the extent that they have gone into hiding. When stalking victims must resort to changing their places of residence, hiding their children, and having security at their work place, the victim becomes a prisoner, looking over her shoulder constantly. In these cases, the victims of this crime fear for their lives and the lives of their families. In all cases heard this term, the victim of the crime was the ex-wife, ex-girlfriend, or ex-acquaintance of the stalker.

Child Abuse is a heinous criminal act. Victims of Child Abuse have a voice. The Grand Jury commends the Department of Human Services, the Metropolitan Police Department, The Metropolitan Public School System and day care centers for their interest in protecting the children of our community. Cases of child abuse heard by the Grand Jury ranged from spanking a child too hard to Child Aggravated Rape cases.

The Metropolitan Police Department and the Department of Human Services are cooperating with concerned neighbors, day care centers and public schools in cases of suspected abuse. The Grand Jury is concerned that in some abusive situations, the child is not taken from the home soon enough, or the child is returned to the home too quickly. While we realize that the Department of Human Services seeks to keep families together, some cases of severe abuse require quick intervention. During the review of many child abuse cases, the underlying concern of the Grand Jury was the period of time that passed from when the offense occurred until the case was presented.

The use of the Our Kids Clinic in dealing with cases of physical and sexual abuse is commended. This setting provides a comfortable environment for counseling, questioning and examination of children and juveniles.

A result of our review of many cases of child abuse and child sexual abuse, we have great concerns for the childrens welfare. There was a great number of cases involving step-parents and friends abusing the children. We are further concerned by the number

of parents who are no more than children themselves. In some sexual abuse cases, the mother of the child was suspicious but took no action until weeks or months later. Our concern is for the welfare of these children. Fear rules the lives of many of these families. A caregiver may be afraid to report the abuse because (1) they fear abuse themselves, (2) they are being abused by the perpetrator themselves, or (3) they fear losing the relationship with the person involved.

The Grand Jury heard cases where testimony indicated that the perpetrator of the abuse was a victim of child abuse themselves. In some situations of child abuse by grandparents, the parents of the abused children were abused by those very same people as children. Family values and the importance of parental responsibility are of great concern to the Grand Jury. While we realize that abuse has gone on since man has been on earth, we must change the status of the family.

Judge Philip Sadler informed the Grand Jury that programs designed to counsel and prevent further abuse of children and spouses are in place and being used by the courts as both punishment and rehabilitation for domestic crimes.

Single parent homes are commonplace. Most crime, adult and juvenile, is directly related to the relationships in the home. Young men without a dominant, caring, father figure in the home are committing crimes at a frightful rate. Cases of abuse and assault, coupled with increasing theft and drug-related crime, leaves the public fearing for their lives and their material possessions.

While we realize that frustration over unemployment, abuse of alcohol and drugs, and mental problems are excuses for domestic violence and child abuse, perpetrators of these crimes must be punished. The time for excuses is in the past. Society must make people responsible for their actions. The Grand Jury is concerned that timely prosecution of these crimes would eliminate further abuse. In most every case of physical abuse, the victim has ended or is in the process of ending the relationship. There is concern by the Grand Jury that from the time a complaint is filed and the perpetrator

is brought to justice, the victim faces fear every day. When bond is set for the perpetrator, and they make bond and are released, the Grand Jury may not hear the case until months later. We realize that it takes time to investigate cases, but cases should be expedited for the protection of the victims.

The Grand Jury makes the following recommendations concerning Domestic Violence and Child Abuse:

1. That with the formation of the new Domestic Violence Unit, the victims of domestic violence be removed from being directly involved in prosecuting the case. Protecting the victim of the abuse from further abuse, coercion or harassment by the perpetrator is of utmost concern.
2. That the Domestic Violence Unit of the Metropolitan Police Department draft a new General Order for the Department to replace the January 5, 1990 order concerning answering calls pertaining to Domestic Violence according to its standards and practices.
3. That the Criminal Justice System and the Courts take swift action against stalkers. Lives are at stake. Not only is the psychological well-being of the victim our concern, the Grand Jury knows that the physical well-being is at stake also.
4. That a system be put in place that would separate child abuse cases from the "normal" time frame and allow these cases to be presented in the shortest time possible. Our concern is for the children that must continue to live under these conditions and be subject to further possible abuse.

OTHER GRAND JURY COMMENTS

The Grand Jury heard the same old "story" from numerous public officials concerning the lack of detention facilities in Davidson County. This so called overcrowding is causing two things to happen in this community:

1. Criminals are receiving extremely low bonds on numerous occasions and thus are able to return quickly to their life of crime. This is particularly true in cases involving drugs.
2. Criminals are having their bonds reduced on a regular basis, usually on Saturdays.

According to records in the Attorney General's Office, indictments prepared for presentation to the Grand Jury have increased by 64 percent in the past year. There is no long range plan in Davidson County to provide more detention facilities of any kind. These facilities are needed for all types of criminals--particularly pre-trial felons.

The Tennessee Criminal Sentencing Reform Act of 1989 leaves much to be desired. This is Section 40-35-101.

Specifically, under Section 40-35-106 Multiple Offender, a "Multiple Offender" should be a defendant who has received two (2) felony convictions . . . not a minimum of two (2) but no more than four (4) prior felony convictions as the section currently reads.

Under Section 40-35-107, Persistent Offender, a "Persistent Offender" should be a defendant who has received any combination of three (3) prior felony convictions not

five (5) or more prior felony convictions as the section currently reads.

Specifically under Section 40-35-111, Authorized Terms of Imprisonment and Fines for Felonies and Misdemeanors, the authorized terms of imprisonment for felonies for a Class A felony should be not less than twenty-five (25) nor more than seventy-five (75) years not not less than fifteen (15) nor more than sixty (60) years as the section currently reads.

Specifically under Section 40-35-112, Sentence Ranges, a "Range I" sentence is as follows: For a Class A felony, not less than fifteen (15) nor more than twenty-five (25) years. This should be revised to read: For a Class A felony, not less than twenty-five (25) nor more than seventy-five (75) years.

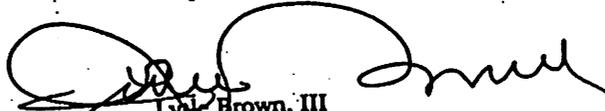
The Tennessee Department of Corrections Offender (felonies) population has increased by 100 percent in the past nine years. There has been an increase of more than 10 percent in the past year. At this rate, the State will need space for 25,000 felons by the year 2003.

RECOMMENDATIONS DIRECTED AT THE METROPOLITAN GOVERNMENT OF DAVIDSON COUNTY

1. The practice of taking telephone reports in burglary cases instead of on the scene investigations should be eliminated.
2. The Metropolitan Police Department should standardize weapons carried by police officers. This process should begin at once and be completed by the end of 1996.
3. Offenders should be mandated to complete educational programs while in jail even for short periods of time.
4. Drug abuse programs should be expanded at both state and local levels.
5. The Metropolitan Mayor together with the Sheriff and other agency heads should provide a long-range plan to increase detention facilities in Davidson County,

particularly for pre-trial felons.

Respectfully submitted,


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