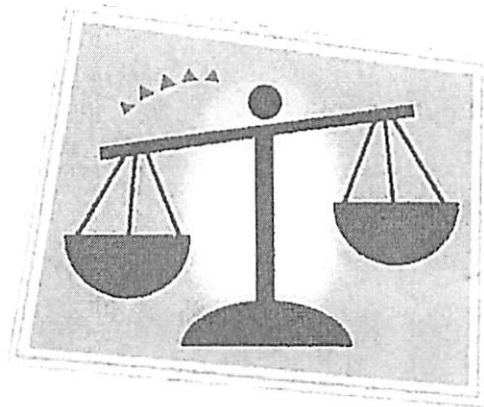


Final Report

Davidson County Grand Jury

April – June 2017



The Honorable Judge Seth Norman

Criminal Court Division IV

Jury Foreman: Stan Fossick

Introduction

We, the members of the Davidson County Grand Jury for the April – June 2017 term, respectfully submit the following report in summary of our service and activities.

We want to express our gratitude for the opportunity to perform our civic duty for Davidson County. Our service was greatly enhanced by knowledge imparted to us about the criminal justice system and the personnel committed to its proper and efficient operation. This was achieved through informative presentations by key personnel and through site visits and related experiences made available to us. Few citizens in our city are so privileged as we were to carry out this responsibility.

Instruction

This grand jury convened on April 10 in Judge Norman's courtroom, at which time we were introduced to our foreman, Stan Fossick, a very competent and experienced jurist who has served that leadership role over many years. His knowledge and understanding about the judicial process in Davidson County were critical to our ability to render appropriate decisions. He encouraged questions and invited knowledgeable officials to provide answers as necessary. As we developed confidence over time, Mr. Fossick gave increasing responsibility to several jurors to share in the leadership roles necessary to the management of our duties. He was always patient and supportive in the process.

Beginning April 17, and continuing April 18, 21, and 24, we heard presentations from key personnel in the District Attorney General's Office and the Metro Nashville Police Department.

General Glenn Funk presented himself to us and provided an overview of his role and that of his office. Of note, was his statement that the grand jury is a curb on the power vested in his office. "The grand jury is a shield for citizens, not a sword." He provided some statistics about the numbers and kinds of cases presented to his office. The murder rate is on the rise and domestic violence accounts for 50% of violent crimes here. On the positive side, inmate jail days per year have decreased from 200,000 to 170,000. The new criminal justice building is on schedule to be completed in 2019. A new feature will be dedicated space for internment of offenders with mental illness.

General Rodney Faulk is the principal liaison between the DA's office and the grand jury. He spoke to us about his role and identified other members of his team. He told us that MNPD Sgt. Sean Richmond would be presenting many of the cases we would hear. He cautioned us that sealed indictments come directly to the grand jury and that secrecy is paramount.

A succession of presentations followed from representatives of the various crime units:

- **Child Sex Abuse Unit** – Det. David Slessinger and Sue Ross, RN, with partner agency Our Kids spoke on sex abuse crimes and how victims are helped. The unit is organized under Youth Services. Three detectives are assigned to the unit, which includes an internet crime team. The incidence of child sexual abuse is troubling. It affects one in four girls, and one in six boys. Ninety percent of these crimes are committed by a relative or trusted friend. A weapon is involved in five percent of cases investigated. Anyone convicted of a sex crime is put on the sex offender registry for life and must provide updated information on where they live and work. Failure to report changes is a crime. Our Kids is an organization that works with the unit detectives and handles the medical evaluation of the victims. The agency covers all of Middle Tennessee and serves 800 children and youth per year out of four satellite clinics and the Nashville clinic on Hayes Street. These are staffed by trained nurse practitioners and social workers.
- **D.U.I. Unit** – Officer Brad Nave was the presenter. In the U.S., close to one-third (31%) of fatal road crashes on weekends are because of alcohol impairment. In Davidson County last year (2016) there were 66 fatal crashes resulting in 68 deaths. Of these crashes, 38% involved impaired driving. Alcohol related D.U.I. arrests are declining while drug related D.U.I. arrests are on the rise. Officer Nave demonstrated the use of ARIDE (Advanced Roadside Impaired Driving Enforcement) sobriety testing, which requires motorists suspected of D.U.I. to follow officer instructions to perform walk and turn (WAT), one leg stand (OLS), and HGN or horizontal gaze nystagmus. The three tests given together can gauge with 91% accuracy whether or not the driver is impaired.
- **Gangs Unit** – Detective Rob Kelly informed us about the Specialized Investigations Division, which includes 18 detectives in three teams. We were told that gang activity in Nashville is not as prevalent as it is in cities like Chicago and Los Angeles. In Middle Tennessee, the typical gang member is 16 years old, 85-90% male, 70% low achieving fulltime student, 77% in single parent household, 80% low income, and 66% have a sibling with an arrest record.
- **Domestic Violence Unit** – Sgt. Rob Bandish covered the topic of domestic violence, which is prevalent here and across the nation. Tennessee ranks ninth in the nation in the number of domestic violence calls. For a responding police officer, a domestic call is potentially the most dangerous. In the year 2015, there were 27,731 calls to report suspected domestic abuse. One in every seven women has been the victim of domestic violence; and one in 18 men. Domestic violence is the leading cause of injury to women, which is more than auto accidents, muggings, and rapes combined. National statistics indicate that domestic violence costs tax payers \$5.8 billion a year. The Domestic Violence Unit includes one captain, one lieutenant, 20 detectives, and four counselors.
- **Drug Task Force** – Sgt. Gene Donegan runs the major case Drug Task Force and trains law officers here and across the U.S. Five percent of the world

population lives in the United States, but 80% of drugs are consumed by Americans. We learned about the classification of controlled substances in federal and state laws. Tennessee is third in the production of outdoor grown marijuana. The state parks are popular locations. The prevalence of Meth labs in Middle Tennessee is down because Mexico is making and bringing into the states meth that is 95-98% pure. Heroin use has been on the increase and Mexico is growing a lot of poppies to produce heroin. More than one million people in the U.S. are addicted to heroin. Fentanyl is a synthetic opioid narcotic that is 50 times stronger than heroin. Heroin is often cut with fentanyl, which has resulted in many deaths from overdose. Narcan is an antidote that can be administered to an overdose victim.

- **Warrants Division** – Capt. Randall Hickerson spoke to us about the Criminal Warrants Division, which is organized into three sections. The warrants section serves outstanding criminal warrants. The fugitive section serves warrants and transports defendants from outside of Tennessee. The U.S. Martial task force serves warrants in Middle Tennessee outside of Davidson County.

MNPD Chief Steve Anderson came at our invitation and spoke to us on June 12. We were told how the Department's \$190 million annual budget was allocated and he shared an organizational chart and precinct level statistics on crime. Nashville has moved up to become the 24th largest city in the U.S. The mayor's budget proposes funds to add 70 more police officers. Chief Anderson made a point of saying that Memphis has a police force of 1,900, while Nashville's police force is 1,400, despite Nashville having surpassed Memphis as the state's largest city. The chief described the challenge the Department faces in recruiting police from under-represented populations, especially African American. Nashville's population includes 27% black, while MNPD has only 11% black officers.

Site Visits

- **MNPD Police Academy** – We were provided the opportunity to tour the police academy on May 16 to learn about the training of recruits. The course is demanding and attrition is fairly high. In the most recent class of recruits, 70 began the training, but only 43 graduated. We were able to participate in an exercise responding to a situation on video that required a split second decision about use of deadly force. We saw a team from the Canine Unit as the officer put his dog partner through his paces traversing an obstacle course and responding to voice commands. We gave close inspection of the Bomb Unit vehicle and the robots used in a potentially explosive situation. And we toured the helipad and saw the police helicopters.
- **MNPD CompStat Meeting at the North Precinct** – On June 16 we observed some of the weekly CompStat meeting that all the Precinct commanders, the Precinct Accountability Compliance Lieutenants (PACL), and the Co-Co

(Community Coordinators) attend and report on crimes and activities in their respective precinct. Key personnel from all the MNPD divisions are represented and called upon to update the Chief and the others on their areas of concern.

- **Visit to Judge Norman's Drug Rehabilitation Center** – This was scheduled for our final day of jury service on June 30.
- **Ride Along** – One juror chose to do a ride along with a patrol officer on June 14, attended the morning roll call at the West Precinct and spent the first shift with Field Training Officer Charles Boles. The experience included transporting a probation violator downtown for hand off to the Metro Jail. It was instructive to see how much time is spent completing reports on every activity.

Cases

On April 24, we began hearing and deliberating on cases presented to us by Sgt. Richmond. We greatly appreciated his efficiency, patience in answering our questions, and his professional manner. He was always a welcome presence in the room. Sgt. Chad Turnbow and many others also presented cases for our consideration.

Statistical report of cases reviewed:

___475___ Bound Over True Bills ___2___ No True Bills

___95___ Sealed True Bills ___3___ No True Bills

Concerns and Recommendations

- **The Cayce Homes shooting of Mr. Clemmons by Officer Lippert**

We appreciated that Gen. Funk chose to share the case facts and his deliberations with us on May 5th prior to the press conference announcing that he would not prosecute Officer Lippert. We viewed video of events leading up to, during, and after the fatal shots. Gen. Funk also answered questions and listened to various perspectives expressed by the grand jury. He also shared concerns leading to his decision to call in the Tennessee Bureau of Investigation on all cases involving police shootings resulting in death. Without being critical of MNPD's investigation of the case, Gen. Funk said that bringing in the TBI would mitigate the appearance of bias in the investigative process. This decision was endorsed by Mayor Megan Barry but, according to media reports,

was met with some resistance by MNPD Chief Steve Anderson who defended his department's handling of the investigation.

Prior to the May 22nd court hearing to make public the TBI files of its investigation, the grand jury requested to hear from the TBI about the case. On May 19, TBI Agent Caleb Utterback presented to us the TBI's methods and findings as its lead investigator. His presentation made clear to us the successful efforts made to find and canvas witnesses not interviewed by MNPD. The TBI also found additional surveillance camera views not found by MNPD. The presentations by Gen. Funk and Agent Utterback led us to a favorable opinion of the TBI's involvement in the investigation of police use of deadly force. *While we favor the current MOU between MNPD and the TBI, we would prefer a binding legal agreement that requires the TBI and a panel of citizens (possibly the grand jury) to investigate police use of force resulting in death.*

We discussed the case amongst ourselves on several occasions. Members expressed varying degrees of concern about the use of deadly force in this instance and in general. *We endorse training and use of tactics designed to de-escalate tense situations leading to the use of deadly force. Also, equipping officers with body cameras would be useful in evaluating instances when deadly force is used.*

- **The prevalence of young men with firearms committing violent acts.**

It's a sad reality that handguns are so readily available through legal and illegal means. It is less than helpful that our state legislature changed the law a few years ago to allow confiscated weapons to be resold and thus recycled, increasing the odds that a weapon used once to commit a crime might be used for crime a second time. Chief Anderson told us that those weapons used to be destroyed and the metal used to make manhole covers. *We would like to see that policy reinstated again and understand it requires repeal of state law. As a community, we should not miss any opportunity to keep firearms out of circulation.*

- **Violations of the Sex Offender Registry**

A man can commit murder, serve time in prison, and be returned to the general population to live and work wherever he can. Granted, many who commit murders spend the rest of their lives incarcerated. For those who do complete their sentence, there's no registry of convicted murderers and, aside from parole requirements, there's no notice given to the community of this convicted murderer's presence. On the other hand, to be convicted as a sex offender is to be marked for the rest of one's life. All sex crimes, no matter the circumstances, result in a lifetime on the sex offender registry. It is extremely difficult for these men (or women) to return to a 'normal' life when they are so restricted in where they can live. Many of them become homeless and/or hopeless. *Perhaps it is time to categorize sex offenses in much the same way that there are degrees of murder. Give the court more latitude to consider the circumstances and determine if the crime warrants a lifetime on the sex offender registry. Also, permit offenders to petition the court in some cases.*

- **The epidemic of drug use, addiction, and related crimes**

The vast majority of cases we heard involved crimes committed by persons involved with the sale or use of illegal drugs or controlled substances including alcohol. Robberies and burglaries very often are motivated by drug addiction. Pawn shops are a favorite way to turn stolen goods into cash to buy drugs. Oftentimes, crimes of assault and domestic violence are exacerbated by the effects of drugs on the perpetrators. *We have no solutions to offer, but we support addressing the root causes that lead to drug use and addiction.*

Observations about Grand Jury Service

As our service in this session of the Grand Jury comes to an end, we would like to pass along some observations that might be helpful to future grand juries.

- **Commitment and Attendance**

In responding to a jury summons, it then becomes a personal choice to volunteer for service on the grand jury. This is a three month commitment, three mornings each week. Before the commitment is made, it should be clear that attendance is mandatory, not voluntary. Several on our panel seemed unaware of the extent of the commitment. We experienced two days when we were unable to deliberate on cases because we did not have twelve jurors in attendance despite having twelve alternates who could have been called in with sufficient notice. Other than illness or family emergency, any other necessary absence should be announced well in advance to plan for alternates to attend. *The schedule requirements need to be clear at the time that members volunteer for the position, and alternates given sufficient notice when their service is required. Ideally, at least one or two alternate jurors should be in attendance every session day to prevent "lost" days of service.*

- **Rules of Conduct and Procedure**

Grand jury members should be given a complete list of the "rules" of appropriate grand jury conduct. We received various explanations at various times from various people, but it would have been helpful to have the complete code of conduct in a document (e.g., cell phones silenced in the grand jury room, all proceedings in the jury room are secret, rules of presentations, of calling/subpoenaing witnesses, etc.). *It also would be important to make sure everyone reads and perhaps signs this document as a pledge of one's understanding of the expectations.*

- **Preserving Independence and Avoiding Bias**

It is of utmost importance that the grand jury understand and remain cognizant of its role to serve the interests of *citizens*, even those accused of crimes, keeping foremost the

presumption of innocence, a sacred principle in the American criminal justice system. A grand jury is presented only the prosecutors' point of view, primarily through sworn testimony of law officers who serve the government. The grand jury must consider not only is there probable cause to indict a suspect, but is there adherence to the constitutional rights of the suspect as stated in the Fourth Amendment:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

While there is value in general for all citizens to know how police officers are trained at the academy, or how the police department meets weekly to review complicated crime statistics and report on progress, or how Nashville has a drug court that is a model program with a national reputation, there is concern by some of us that these site visits run the risk of biasing the grand jury and compromising its independence. The grand jury should remain impartial and unbiased during its deliberations and the close relationship with police procedure and proceedings put that in jeopardy. *We suggest including an education component by community leaders to address ethnic, racial, and cultural differences prior to hearing cases as well as having a civil rights attorney to review civil liberties guaranteed by law.*

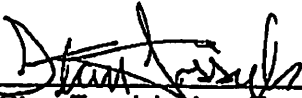
On a positive note: There was general agreement that our panel was a diverse group of individuals: different socio-economic backgrounds, forty year span in ages represented, gender equality, and ethnic representation. The group expressed thoughtful comments and considered opinions reflecting their personal perspectives about particular cases as well as the larger systemic issues that are so often at play. We developed a rapport and enjoyed the time spent together engaged in sharp, witty conversation.


Convening a grand jury is a large and challenging undertaking. With dozens of jurists, and hundreds of criminal cases involving multiple investigators, it must be very difficult to keep things moving forward on a schedule. Those who regularly work within this system are to be commended for its smooth operation.

Finally, we wish to express thanks for the opportunity to report our findings and experiences, and to offer our suggestions for the future.

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Respectfully submitted on June 30, 2017, by the Davidson County Grand Jury for the April – June 2017 term.

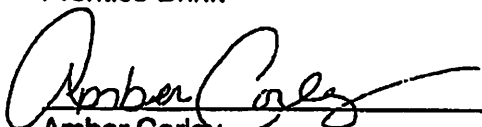

Stan Fossick, Jury Foreman


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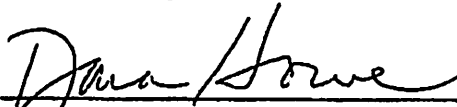

Horace Lanier



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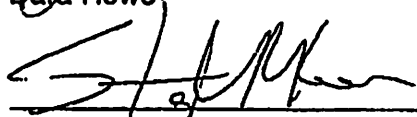

William Mitchell



Amber Corley

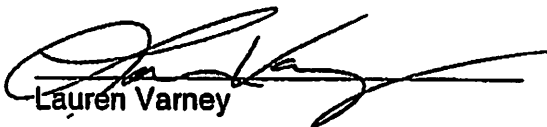

Christine Perkinson


Dara Howe


Laura Seul


Stephen Kerr


Ellie Sights


Lauren Varney