

GRAND JURY REPORT

APRIL – JUNE 2019

The Honorable Jennifer L. Smith

Division IV, Criminal Court,

20th Judicial District

Grand Jury Members:

Stan Fossick, Foreperson



Danita Bohannon-Cohen




Ernest Franklin



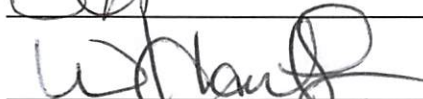
Connetta Graham



Samir Haidar



Wendy Hartley



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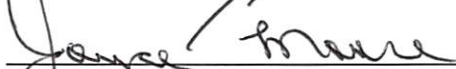
Elena Knaffl



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We, the members of the April-June 2019 Grand Jury of Davidson County, submit this report in summary of our service and experience.

We were charged by Judge Jennifer L. Smith on March 25, 2019, to "fearlessly investigate any and all forms of violations of the criminal laws of our state." It was a charge we took seriously by asking for more information and more evidence whenever warranted.

The overall diversity achieved on the Grand Jury by asking for volunteers was impressive. In all categories – ethnicity, socioeconomic status, life phase, age, education, and general background. Honestly it was surprising to achieve that much diversity from an all-volunteer pool. We worked well as a group, each bringing a unique point of view to the proceedings.

Presentations

Before we heard any cases, we were given presentations from Attorney General Glenn Funk and Assistant District Attorney Rodney Faulk; Drug Task Force Sgt. Gene Donegan; DUI Unit Sgt. James Williams; and Domestic Violence Unit Detectives Nate Ellsworth and Jason Door.

Overall, the best and most helpful presentation was Leann Dugan, RN, from Our Kids. She described the resources available to both investigators and potential victims, but focused mainly on the type of evidence we would see for those cases, why we wouldn't see other types of evidence most likely, and had ample time for us to ask questions.

The other presenters could have benefited from following her format.

The domestic violence statistics for Nashville are impressive, and we understand the police department is understaffed. This presentation in particular could have benefited from handouts outlining possible charges and the criteria for those charges.

Visit from Chief Anderson

We were also paid a visit from Chief Steve Anderson. Chief Anderson discussed the department's efforts to reduce the crime rate through community policing by continuing to implement recommendations from the President's Task Force on 21st Century Policing. By adhering to the community policing model, MNPD can address public safety issues and improve the quality of life throughout the city. Officers and citizens work together to identify problems and to respond to community concerns and needs. These efforts help create trust and a relationship between the officers and citizens.

Chief Anderson also spoke about the need to recruit and retain more police officers.

The department is authorized through the Metro Nashville FY2019 budget for 1,511 officers, however MNPD only employs 1,415 as of June 14, 2019. The department needs another 300

officers, in addition to the 1,511 authorized and as many as 2,000 uniformed officers, to fully cover the city and enhance public safety, he said.

Anderson said the department loses about 90 officers per year to other departments, retirement and other reasons. It takes two full academy classes available each year to just replace the lost officers.

His best solution to the problem is to increase starting pay or possibly award bonuses to new recruits. However, this can create animosity between new recruits and veteran officers, which will do nothing to increase officer retention. It is easier and cheaper to keep an employee than hire and train a new one. Perhaps the pay steps should be reevaluated for current officers, rather than giving those funds to new recruits.

Further, at a cost of approximately \$100,000 to train and outfit a new officer (not counting the patrol unit), it is far more cost effective to retain officers than recruit and train a new one. One officer expressed a discontent because he didn't feel supported by Metro's government. Officers asked for body cameras two years ago but the process has proven to taken more time than he felt it should.

Affordable housing even impacts the retention of officers. More than 50 percent of the officers live out of county, many because of cost. This puts a physical distance between them and the communities they serve. It likely also impacts their decisions to transfer to surrounding counties, which may not have higher pay, but likely has a lower crime rate.

The shortage of officers can be seen in the day patrols, like in the North and South precincts.

During one member's ride-along in North, he was struck by there only being 10 officers available to patrol the 119-square-mile area during the afternoon shift, which tends to be the most active. Each officer has an assigned area or zone to patrol. The same situation was seen in South on a Saturday night only 11 officers were assigned when 15 to 16 are needed to give full coverage to the 69.5-square-mile coverage area.

The shortage of officers means there no supporting officers available for different zones if one or more is called to a scene. This leaves areas uncovered.

Perhaps alternative options could be found, like additional officers could ride together, which would both reduce the cost of equipping new officers and provide officers with much needed backup. Then instead of pulling from other zones, officers arrive with the backup support they need to safely assess the situation. This could even reduce use of force by increasing officers' sense of safety.

It seems as if the city's government is more worried about growing our city's population than growing our police department and ensuring the safety of our community.

Site visits

We visited Davidson County Drug Court, Metro Nashville Police Department Training Academy, the new MNPB headquarters and Office of Family Services, Davidson County Male Correctional Development Center and Maximum Correctional Center, and the weekly ComStat meeting.

We asked for more information about how bails are set, as well as presentations from the Davidson County Public Defenders, and the MNPB Cold Case Squad but ran out of time before they could be arranged.

We were specifically interested in how bails are set because, frankly, they seemed arbitrary at times. The whole bail-bond process was a bit of a mystery to us that we would have liked explained. The stated purpose of bail is to ensure a defendant's appearance in court and protect the public however, an unintended consequence is that poorer defendants are kept in jail while wealthier, or those with access to a high-dollar bonds, can drag out the process taking years to adjudicate their cases.

Of particular concern was a case involving the misdeeds of several out-of-county bondsmen, who came into Davidson County, guns blazing, in search of a bail jumper. The details of which highlighted the need for better training and more transparency in the bail-bond system.

Davidson County Drug Court

As the impact of the opioid epidemic continues to strike the midstate, we heard many cases concerning the possession, sale and use of illegal drugs. The result of these crimes can be tragic as lives and families are rent asunder by addiction.

Judge Seth Norman presides over a novel solution at Davidson County Court IV. Commonly called Drug Court, the program gives hope and structure to most needy addicts. And with an estimated recidivism rate of around 25 percent, the program is more effective than either jail (50 percent in Tennessee) or traditional rehab (50-70 percent). It also houses inmates at a lower rate than Davidson County jail at a rate of \$55 per day compared to \$75.

The only problem we saw on our visit April 26, 2019, is a lack of beds. Demand has produced a nine-month waiting list for the program that takes a year on average to complete. In order for more people to take advantage of the opportunity, Drug Court should be expanded, not just for Davidson County but for the entire state.

Metro Nashville Police Department Training Academy

The most impressive aspect of our May 7, 2019, visit to the Metro Nashville Police Department Training Academy is the extent of the training prospective officers go through.

The Tennessee Police Officer Standards & Training Commission requires a base training level of 400 hours. The MNPD Training Academy approaches closer to 1,000 hours. Of particular note is the additional training officers receive in interacting with marginalized groups (based on race, religion and sexuality), those with mental illnesses and physical disabilities, and those on the autism spectrum. When the additional six months of field training is added to the academy classes, the nature and extent of the training means Nashville's officers should graduate well-prepared for the job.

Of particular note was our opportunity to participate in "Shoot, Don't Shoot" or use of force incident training. The training was eye-opening for many on the Grand Jury as to what types of situations police officers face in the line of duty. While other Grand Juries have taken issue with the exposure to the police's point of view, we do not believe it introduced any unintended bias in favor of the police. As well-educated, thoughtful adults, we were able to separate our experiences at the Training Academy and the facts of the cases that were presented to us.

New Metro Nashville Police Headquarters and Office of Family Safety

On May 21, 2019, we were given a tour of the new Metro Nashville Police Headquarters on Murfreesboro Road.

The three-story, 61,000-square-foot administrative headquarters serves as the face of MNPD and was designed to be a welcoming place that connects the community and the department. The building was well-designed and seemed to be well-constructed in a way that is both open to the public but keeps the safety of officers in mind.

We were also introduced to the Family Justice Center, a 44,000-square-foot and two-story facility that unites resource for those in need. Located within the FJC is Metro's Office of Family Safety, police Domestic Violence Division counselors, Nashville Children's Alliance, and components of the District Attorney's Office and Tennessee Department of Children Services. The facility was designed with the needs of trauma victims in mind to help them process their experiences. The design also took into account the stresses experienced by those who work there and incorporated elements to help the staff. Overall, the FJC provides a home-like and comfortable place for victims to receive services.

After seeing the presentation from domestic violence investigators and hearing a seemingly endless number of cases involving domestic violence, we specifically requested a tour of the facility to see what the city was doing to break the cycle of violence.

Recent studies have shown that a proper response to childhood trauma can do much to prevent rates of alcoholism, depression, cancer, heart attacks, teen pregnancy, child abuse and neighborhood violence. According to the Centers for Disease Control, childhood experiences impact adult actions and choices by affecting brain development. Adverse, or negative, childhood experiences can lead to addiction issues, health problems, low-life potential and even

early death. These experiences, whether it be abuse, neglect, or any unavoidable traumatic event, can have an impact on how young brains grow if they are not handled correctly. In Tennessee, 61 percent of adults reported they have at least one traumatic childhood experience and 24 percent reported having three or more.

By helping children and even adults recover from their Adverse Childhood Experiences, the long-term crime rate in Davidson County could be reduced.

Nashville is very fortunate to have a place like this. There aren't many cities that would invest so much to help victims of domestic violence.

Davidson County Male Correctional Development Center and Maximum Correctional Center

On June 7, 2019, we visited the Davidson County Male Correctional Development Center and Maximum Correctional Center. We found the facilities clean, well organized and well run. At MMC, we were impressed by how staff is able to balance inmate needs, gang affiliations and other issues that could break out in violence between inmates and against staff.

However, we were concerned at the treatment of transgender inmates. We understand the difficulties associated with these inmates and how their personal safety must be protected from possible violence from other inmates. On the other hand, segregating low-level offenders into the solitary environment of the MCC "for their safety" instead could be seen as a form of cruel punishment based on nothing more than the biases of other inmates.

The Sheriff's Office should develop another strategy for dealing with transgender inmates that does not appear like a form of additional punishment.

We were also concerned about the lack of space available for inmates in the MCC to meet with their legal counsel. They are only afforded a large open space. More should be provided to ensure they receive adequate representation.

With recidivism rates hovering near 50 percent in Tennessee (which is better than the national rate of 76 percent), Davidson County could benefit even more from an introduction of more programs for rehabilitation in jail. Granted work-release programs and access to high school equivalency certificates are available. Inmates should be allowed access to training and college credits that could change the courses of their lives. Rehabilitation and reentry programs – specifically those including education, training, counseling and treatment – have proven highly effective in reducing high recidivism rates. In order to change their behaviors and world-view, inmates may also need therapy and other ways to rehabilitate more than just pay penance for their past deeds.

CompStat

On June 14, 2019, we attended part of MNPDP's weekly CompStat meeting. During the meeting, top-level commanders from each precinct and analysts gather to review reports of crime data and discuss tactics for combating crime in Nashville.

For instance, several precinct commanders discussed high rates of motor vehicle thefts and ways to prevent the crime, like the Park Smart marketing campaign. Metro Nashville sees about 50 motor vehicle thefts per week with 70 percent taken with keys. These stolen cars often contain an unsecured firearm and are then used as a tool for other violent offenses and gang activity.

To illustrate how precincts are organized, the representative from the West Precinct explained the precinct is broken into three patrol shifts, but also houses its own Criminal Investigation Department, Crime Suppression Unit, Warrants Department, etc. It also includes community engagement teams as a way for MNPDP to get more involved in the community. He also doled out the data. In the previous week, West investigated 111 incidents with 120 victims. About 40 of the cases were cleared.

West's community coordinator also reported on his efforts at building trust in the community, which could lead to a lower crime rate. He has attended 132 community meetings so far this year. As evidenced from the presentations we experienced, community outreach on the precinct level is impressive. Not only the individual officers, who work as ambassadors for the department, but divisions also reach out to the community. For example, the officers from the Criminal Warrants Division visited Tristar Centennial Children's Hospital to hand out Guardian Bears to the sick children. This was in addition to serving arrest warrants, search warrants, performing extraditions and working with the U.S. Marshall's Task Force.

Ride-alongs

Grand Jury members were allowed to ride with officers throughout Davidson County. Other than the shortage of officers, there were a few other points we would like to address.

We were impressed by the professionalism and demeanor of the officers we were allowed to shadow, as well as efforts to build trust within communities. The Hermitage Precinct asks each officer to be involved in community. One carries sports equipment, one is involved with local businesses. However, all pay for their outreach out of their own pockets. Efforts should be made to develop a local business-funded mini-grant program to help offset the cost for officers.

Additional support services are also needed for police officers, who face danger and frustration on a daily basis.

We also noticed the amount of time and frustration officers spend on paperwork. For one rider, the officer spent an hour filling out a missing persons form only to have the computer freeze

while it was filing. Luckily she had saved it, but had she not that time would have been wasted. Another rider noticed officers must file similar information in several places. Better integration between forms and it equipment is needed. This would keep officers patrolling and not parked filling out paperwork.

Concerns from cases

The first week of the April-June term of the Davidson County Grand Jury contained multiple presentations from various units within the Metro Nashville Davidson County Police Department.

It was interesting to learn how sex abuse claims against children are investigated and how the department's DUI Unit functions. However, it would have also been useful to be given a brief primer on the process, along with accompanying handouts explaining the crimes with which we would most often be faced.

It would have helped in the beginning if we would have received more detail about the court's expectations and processes. Also a brief explanation of the road map of a criminal case would have been helpful. As mostly law-abiding citizens, a majority of the Grand Jury was unaware of what actually happens after a person is arrested. From bond amounts to plea deals, many were wholly unaware of the process and the pitfalls that are contained therein.

Like much of our judicial system, the process in and of itself is not necessarily fatally flawed, but the human element can cut corners and unintentionally insert bias.

Inclusion of criminal backgrounds

Another troubling aspect of how the cases were presented was the inclusion of a suspect's criminal history, which often had no bearing on the case at hand. This serves to introduce an unintended level of bias into the proceedings. We are there to decide whether a single case has the evidence to support the charges, no matter the suspect's prior bad acts.

While the defendant's criminal history was at times over emphasized, it can also be used to establish a pattern of behavior. As a compromise, rather than reciting all prior crimes, jurors should only be informed of the defendant's relevant criminal history.

Volume of cases

As a large and growing city, Nashville has its fair share of crime. That means there are hundreds of cases that get brought before the Grand Jury in any session. We as a group heard an average of 30-35 cases (a few times more than 40 cases) per day in a three-hour session. It is a striking amount of information to take in over such a short period, especially when the facts of some cases are terrible.

At times the police department's representative read so quickly, it was difficult for some members to process the information before he began the next presentation of facts. We jokingly referred to it as "the lightning round."

Then during deliberations, we were asked if there were any cases we had questions about. It would have been better should we have singled out cases individually instead of a blanket yes or no for as many as 20 cases. The push to hear a staggering amount of cases within one voting session could lead to decision fatigue. While the relaxed atmosphere offsets the gravity of the crimes presented, an adherence to a modified version of Robert's Rules of Order would be helpful to process and discuss the facts presented.

The number of cases we heard was not aided by the General Funk's decision to not resolve firearms cases in General Sessions and send them to the Grand Jury. We commend his commitment to punishing violators but it greatly increases the volume of cases given to an already overwhelmed body. If there is a way to settle these cases in General Sessions, they should be. There was little reason for some of these cases to come before the Grand Jury.

Although we understand the Constitutional right to a Grand Jury review, some cases, mostly DUIs, clog up the system and take time away from more serious cases. Given the staggering number of cases heard in any Grand Jury session, time is of the essence. Perhaps these cases and others that are more cut and dry could be bundled at the end of the session.

Despite these observations, we would like to commend our fellow jurors for making sure that most objections and questions were relevant to the cases at hand and coming to fair decisions in each case.

Domestic violence

The rate of domestic violence in Davidson County is alarming. Through the first half of our session 22 percent of the cases we heard involved a domestic violence component, including one homicide.

These numbers are consistent with a report produced by the Domestic Abuse Death Review Team in 2018. According to the DADRT report, Davidson County was responsible for 22 percent of all of Tennessee's domestic violence cases in 2017. In that same year, 15 deaths in the county were related to domestic violence.

Some days the amount of domestic cases seemed endless. While Davidson County has made strides to combat the impact and extent of domestic violence, the rate at which violence is perpetrated by intimate partners is disturbing. As stated before, proper handling of these cases could improve the life of victims and reduce the crime rate in the long term.

Proliferation of Guns

Through the first half of our session, 27 percent of cases included a firearm. Many of these were the illegal possession of a firearm by a felon and most of those were stolen. In 2018, 659 guns were reported stolen out of vehicles in Nashville – a 70 percent jump over 2016. While not all the guns were stolen from within Davidson County, several came from surrounding counties.

The rise in stolen guns can be tracked back to a change in Tennessee law that makes it easier for individuals to keep guns in their cars. With the ease at which vehicles are stolen in Davidson County, perhaps tougher penalties should be implemented for individuals who left firearms unattended and available for the taking.

Crimes against children

The Metro Nashville Police Department is failing our most vulnerable citizens by understaffing the Child Sex Abuse and Exploitation unit. This unit, which is responsible for investigating suspected child molestation, child sex abuse, child exploitation, only has two detectives. They investigated 229 cases in 2018 alone. One detective has an active caseload of 50 cases and a backlog two years long.

With proper staffing, the detectives could be proactive instead of reactive. The detectives suggested they need six investigators and a full-time supervisor to keep up with the demand and prevent sex crimes against children.

Clarification on pay

Tennessee Code Annotated § 22-4-106(b) requires an employer, subject to certain limited exceptions, to provide an employee his or her "usual compensation" for time "actually spent serving and traveling to and from jury duty." The law also states that jurors are not required to return to work if service, including travel time, lasts longer than three hours.

It does not define what "usual compensation" means, whether it be an hourly wage for only the time served or an entire salary.

Because our sessions always lasted more than three hours, none of us were required to return to work. Some did, some didn't. One juror in particular was unable to work either before or after we had dismissed for the day. Her employer then refused to pay her full pay. Because of vague wording in the statute, her employer insisted on only paying her for the hours she was serving on the jury, not the entire day's pay.

Attempts to clarify this discrepancy through both the foreman and Judge Smith were unsuccessful. Questions regarding pay should be responded to promptly and clearly so jurors are not faced with financial hardships from performing their civic duty.

Other observations

- One of the District Attorneys had an obvious bias in a case and didn't hesitate to make it known to the jury nor hesitated to be clearly annoyed when the jury didn't agree with her.
- Given the case involving out-of-county bail bondsmen and bounty hunters, we would suggest more training is needed.

Conclusion

From our site visits and presentations, we learned there are no simple solutions to complex problems and there are no problems more money can't fix. Much of the county's judicial system is underfunded, but stakeholders make due with what they have. But additional upfront investment could, in turn, reduce costs in the long term.

We truly appreciate the opportunities to learn about Davidson County's judicial system and take part in the process.

Additional thank yous

We would like to extend a sincere thank you to the following:

- Lori Hooberry in the District Attorney's office, who kept us organized and on track,
- Sgt. Sean Richmond and Officer William Fox, who presented a majority of the cases we heard so individual officers and detectives can stay on the streets, keeping our city safe,
- Assistant District Attorney Rodney Faulk, who answered our questions on the finer points of criminal law, and
- Grand Jury Foreperson Stan Fossick for providing the expertise and leadership needed for us to discharge our civic duty, as well as knowing when to dismiss a juror, calling us back to order after breaks, etc.