Report of the Grand Jury of Davidson County, January Term, 2007

We are proud to have served on the Grand Jury of Davidson County for the January Term of 2007. In accordance with the instructions of the Honorable Monte Watkins, we issue this Report.

SPECIFIC DUTIES

Judge Watkins charged us with the specific duty to

1. "inquire into, consider, and act on all cases submitted to it by the district attorney general"

We spent the vast majority of our time and effort on these cases. We believed we must find for each count in each indictment prepared by the District Attorney probable cause both that a crime was committed and that the accused committed the crime charged. We required a relatively low level of proof and often relied on hearsay evidence and other information which might not be admissible in a criminal trial.

We returned 820 true bills. A true bill goes forward in the judicial process. We returned 26 no true bills. In most all cases, a no true bill ends the proceedings against the accused.

We reduced the charges or dropped counts in the proposed indictments in approximately 27 of the 832 true bills which we returned. This means that some of the charges in these proposed indictments went forward in the criminal process. Other charges in these indictments were reduced to less serious offenses or dismissed.

We discussed with the District Attorney enhancing or "bumping up" the charges in several indictments. On some of these enhancements, the District Attorney agreed and on some he did not. We returned indictments with enhanced charges approximately 7 times. This means that these accused were charged with more serious offenses. In no case did we enhance charges without the concurrence of the District Attorney.

We did not act on one case in which several grand jurors did not believe that the acts of the accused matched the particular crime described in the indictment, but rather another, less serious criminal offense. Since the underlying facts did not appear to be in dispute, we discussed this at length with the office of the District Attorney, who conferred with the State Attorney General. We were advised that the State Attorney General stated that the District Attorney's position was not an unreasonable interpretation of the statute. We then declined to act because the concerns of the Grand Jury were based on the meaning of the statute and not on interpretations of facts. We trust that this case will be presented to the next Grand Jury because we unanimously agree that this individual should be prosecuted under whatever is ultimately determined to be the appropriate statute.

We did not act on a second case. An individual was charged with aggravated assault. A witness to a portion of the incident was temporarily unavailable. We understand this case will be presented to the next Grand Jury when the witness becomes available.

In a third case, we advised the District Attorney that we returned a true bill for two counts of a three count indictment and a no true bill for the third count. The District Attorney withdrew this indictment before the weekly report was submitted to the Criminal Court Clerk.

We considered a few other cases that were withdrawn for technical or logistic reasons.

The foreman, at the request of the District Attorney, executed 110 subpoenas primarily for medical records. All appeared to be in order and appropriate.

2. "inquire into any report of a criminal offense brought to its attention by a member of the grand jury"

We did not return any presentments. Either the Grand Jury as a body or individual grand jurors referred several matters to officers of the Metropolitan Police Department or the District Attorney for further investigation and review.

We considered an application for a grand jury investigation. The person making the application was in state custody. A panel of three heard the testimony of a witness. The panel determined that the information presented did not warrant investigation by the grand jury.

3. " inquire into the condition and management of prisons and other county buildings and institutions within the county"

We inspected the Criminal Justice Center (jail), the Juvenile Detention Center, and the residential facilities of the Metropolitan Drug Court. We were given complete access to each part of these facilities that we requested. We got answers to all of our questions. We did not observe anything that did not meet what we consider minimum standards for the safe and humane treatment of those detained.

The new booking facility in the Criminal Justice Center is a vast improvement over the previous facility.

We join several previous Grand Juries in noting design problems with the Juvenile Detention Center. The facilities, managed by a private concern, are fully accredited and appeared to be run well. We noted the personal involvement of the Honorable Betty Adams Green in the operations of the Juvenile Detention Center.

We found the residential facility of the Metropolitan Drug Court to be truly remarkable. It appears to be a cost-effective detention facility appropriate for non-violent felons. It addresses a very serious problem by focusing on drug offenders with a strong rehabilitative component. We heard most impressive statistics concerning recidivism. The facility is unique in Tennessee and perhaps the country. It deserves the national acclaim and recognition it receives.

Regretfully, due to lack of time, we did not inspect the Riverbend Maximum Security Institution or the Tennessee Prison for Women.

4. " inquire into the condition of the county treasury"

We made no such inquiries.

5. "inquire into the correctness and sufficiency of the bonds of county officers"

We made no such inquiries.

6. "inquire into any state or local officers' abuse of office"

We found that drugs are deeply interwoven with crime in Nashville. Extensive drug activity in certain neighborhoods profoundly and adversely affects the quality of life and the personal safety of our citizens. This is particularly true for those citizens who have seen the places where they live become infested through no fault of their own. Violence, reckless conduct, guns and huge sums of cash often accompany drug distribution and sales.

In the course of hearing testimony, several grand jurors had questions relating to the drug enforcement policies of Davidson County. These grand jurors believed some testimony could be interpreted to indicate profiling or selective enforcement. (This did not appear to any grand juror to be race or ethically based, rather based on the socio-economic status of the individuals and the neighborhood in which the enforcement took place.) Moreover, most grand jurors did not understand the allocation of resources directed towards what appeared to be relatively minor drug offenses.

Accordingly, the Grand Jury invited the Metropolitan Police Department to address these issues. Captain Henry Todd, Lieutenant William Mackall and Sergeant Ricky Williams appeared before the Grand Jury and answered questions. They explained the massive proportions of the challenge, and the changing nature of the illegal drug business. Nashville, with its location on the interstates, has become a way station or distribution point. It is no longer a place "drug lords" use to direct operations.

The policies are directed towards both sellers and buyers with the expectation that drug activity will decrease if demand decreases and that active enforcement dampens demand. According to Captain Todd, this philosophy is followed by most, if not all, other large police departments in the United States.
According to Captain Todd, these enforcement policies result in actions taken in response to citizen complaints. "Community policing" often involves traffic stops, walk and talk, knock and talk, use of confidential informants, and similar tactics.

Community policing is inherently controversial. It balances the safety and well being of our citizens against personal freedom. It may inhibit certain lawful but questionable lifestyles. It may be abused by an over-aggressive mentality. Yet, it may be appropriate, if not absolutely necessary, to preserve our society. Moreover, our observations were based on anecdotal information gathered mainly from incidents described to us by law enforcement officials in which a serious crime was involved. This is no random sample to judge the effectiveness or legitimacy of a program.

We join the previous Grand Juries in noting how often drugs are interrelated with serious crime. We cannot overemphasize the seriousness of this problem. Previous Grand Juries have estimated that 80 percent of the serious crimes in Davidson County have a drug or alcohol connection. This appears to us to be low.

Unfortunately, we did not have resources, competence, or the time to investigate fully these issues, which can profoundly influence the character of the city in which we live.

COMMENTS AND OBSERVATIONS CONCERNING THE METROPOLITAN POLICE DEPARTMENT

We were uniformly impressed with the quality, sincerity, and dedication of the police officers who appeared before us on a daily basis. These men and women have difficult, challenging and often dangerous jobs, burdened with paperwork, for which they do not receive the credit or recognition that they deserve. Daily acts of quiet courage are commonplace. Nashville is indeed fortunate to have them in our service.

In our visit to the Police Academy, we asked extensive questions. Without advising the officers what we planned to do, we created simulated situations in which the officers demonstrated how and when to the use force in carrying out law enforcement duties. We are pleased to report that we believe that the standards taught and the training given was appropriate in all respects. We also note that we repeatedly saw in the cases before us in which the officers used great restraint under provocation.

Nashville has become a cosmopolitan city, with an international population and changing demographics. While illegal immigration is a definite problem, many of foreign origin are here legally. We believe that the Metropolitan Police Department recognizes the difficulties it faces in order to interact positively with these populations. Particularly important are outreach efforts relating to drinking and driving. Unfortunately, segments of our population do not appear to appreciate the often tragic consequences of driving while intoxicated. We applaud efforts with the Department aggressively to recruit bi-lingual and multi-cultural officers.

RECOMMENDATIONS CONCERNING PUBLIC INSTITUTIONS

1. We, like so many of our predecessors, recommend a roof for the recreational area for the Juvenile Detention Center. There are design issues relating to privacy for the female detainees that we believe should be addressed.

2. We cautiously recommend expansion of the Metropolitan Drug Court or the creation of such programs elsewhere. Similar programs established outside of Tennessee have not enjoyed its level of success. We believe Nashville's Drug Court in large part reflects the personality and vitality of the Honorable Seth Norman. Judge Norman stated that he believed there are other judges willing and able to give the level of support, compassion and ingenuity necessary for the leadership such a program requires. Identifying and maintaining such leadership is a daunting challenge which should be fully considered prior to expending the necessary funds for expansion or replication.

RECOMMENDATIONS CONCERNING LAW ENFORCEMENT

1. We applaud the remarkable improvements in registering and monitoring sex offenders. These resulted at least in part from legislative changes. We note however that there appears to be some confusion among the varying bodies across the state as to their respective duties. We suggest standardized procedures. Many sex offenders are required physically to report their whereabouts quarterly and some fail to do so. While we do not doubt that these individuals are advised fully of their duty to report, we ask whether there might be a higher rate of compliance if a reminder was sent to the last know address of such individuals at the beginning of the month in which they are required to report. (Failure to send or to receive the reminder of course would not be considered a defense for failure to report).

2. We heard numerous apparently conflicting statements from officers who testified before us concerning the criminal trespass statute. We suggest that the Metropolitan Police Department internally review its enforcement policies and communicate its policy with its officers.

3. We suggest a review of the Metropolitan Government's regulation of scrap metal sales. There were numerous incidents in which metal was illegally stripped from homes, stolen cars and businesses. The metal was then sold to lawfully operating recycling businesses. Some recycling businesses voluntarily require proof of ownership and identification but some do not. This gives an unfair advantage to those who do not require appropriate proof.

4. At the Police Academy, we noted the difficulties in recruiting new officers. This appears to a consequence of competition with the military for the qualified pool of applicants. We also saw trained dogs in action as a law enforcement tool. A dog cannot replace a trained officer, but can perform some functions such as drug detection more efficiently than a human. We suggest that the Department consider increasing the number of canines in service, particularly at a time when it is not recruiting the desired number of new officers.

5. We heard again and again cases involving individuals who had been repeatedly convicted of DUI or were driving with a suspended license. Regretfully, it was not usual to see individuals with 10 or more convictions. Too often, those charged with evading arrest had suspended licenses. Dealing aggressively with these individuals should be given a high priority. In many instances, they should be charged as habitual motor vehicle offenders. Impoundment and confiscation of vehicles to the extent permitted by law are in our opinion appropriate. We recognize legislation to do this may be required.

6. Time and time again we heard the Metropolitan Police had yet to receive results from tests to be performed by the laboratory of the TBI. Unnecessary delay benefits no one. We encourage the State of Tennessee to take all steps necessary to cause the laboratory to perform tests promptly, including if necessary the reallocation or appropriation of funds.

7. We noted anecdotally a lack of respect and coordination between the Metropolitan Police and the State Department of Children's Services. We encourage these departments to seek ways to build trust and communication as a team.

THE GRAND JURY PROCESS

Judge Watkins clearly instructed us to retain our independence. We did not assume that every matter submitted to us was a case for which an indictment should be returned. Accordingly, we required, sometimes to the visible irritation of the person giving testimony, proof on each count of each indictment.

We questioned the witnesses ourselves. The District Attorney was never present when we heard testimony. He gave us only legal advice and resisted opportunities to influence our determination of facts. He replied with a hypothetical when we asked questions containing the facts of the case at hand. This does not mean he agreed with all of our conclusions. At times there was open and obvious disagreement over cases.

We tried to indict where justified by the facts. We denied the charges and refused indictments when we believed the accusation was not well-founded. Often in our deliberations one of us would say, "Remember we are talking about a man's liberty." Similarly, when we got off track, as we frequently did, another might say, to paraphrase Judge Watkins' instructions, "We are here only to determine whether there was probable cause to believe that a crime was committed and that the person accused committed the crime."

Tory Johnson in our first day called us the gatekeepers to the criminal justice system. His office, to its credit, as frustrating as it often found us, always respected this role.

THOUGHTS FOR FUTURE GRAND JURIES

Each Grand Jury is unique. It will have its own personality. We offer the following thoughts for our successors:

1. Establish very early ground rules. You come from different backgrounds and have different ideas about the way the meetings should run. This includes mundane matters such as length of breaks, promptness, cross talk, and the like.

2. Consider hearing from the Metropolitan Police at the earliest convenience on the domestic violence and on drug types and paraphernalia. We found the presentations of Captain Rita Baker and Lieutenant Randy Hickerson invaluable.

3. Consider having the site visits early in the term and invite the alternates to attend. The information learned will help you in your deliberations.

4. If you expect to hear numerous cases from a state agency, such as the Department of Human Services or TennCare, ask for a presentation about the agency functions before you hear the cases. If time permits, it would be better to have a site visit. We regret we did not do this.

We have the following thoughts concerning the function of future Grand Juries:

1. We had officers testifying before us who first learned the matter on which they were to testify only a few minutes before their testimony. While we recognize scheduling conflicts arise, we suggest when practical the officers have at least 48 hours notice.

2. Consider raising the pay which is considerably less than minimum wage. It is a burden on some grand jurors and a greater burden on some employers. As a practical matter it keeps some, such as the self-employed, from serving.

3. Consider empanelling a special grand jury for oversight purposes. Well over 90 percent of our time was spent considering and acting upon indictments presented to us by the District Attorney. We were unable adequately fulfill our citizen oversight function. Perhaps, persons who had previously served on Grand Juries could be chosen for a Grand Jury with a primary oversight role.

PERSONAL OBSERVATIONS

We express our deep appreciation to Judge Watkins for the opportunity that few ever experience in their lifetimes. We received a hands-on crash course in crime and punishment in Davidson County. There is a lot going on in this county that the average citizen does not appreciate. Every day we heard examples of heroism and kindness, depravity and selfishness. We were enlightened and disturbed, depressed and exhilarated. Each of us had sleepless nights after hearing what we did. We shared with the officers who testified before us the frustration of arresting the same accused for the same crime at the same location three or four days after the first and some times the second arrest. We also had our share of comic relief. Criminals did do some very dumb things. But the pictures of abused children and the cruelty of domestic violence will stay with us forever. So will the stories of the wrecks drugs made out of lives, especially the young, the effects of drunk driving, and the violence arising out of gangs. We hope we dealt with these matters in way that will make Nashville a better place to raise our families.

As Judge Watkins explained, the Grand Jury is vital to the peace, happiness and welfare of our community. We, like the other Grand Juries before us, were pleased to come together as strangers and leave as the Grand Jury of Davidson County.

We thank all, too numerous to name, for the help along our way.

Respectfully submitted,

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