

**TASK FORCE TO EXAMINE IMPROVEMENTS TO
THE OHIO GRAND JURY SYSTEM**

Minutes of the April 1, 2016, Meeting

Members present: Judge Stephen McIntosh (Chair), Daniel Lutz (Vice Chair), Senator Edna Brown, Judge Joyce Campbell, Representative Robert Cupp, Judge Michelle Earley, Judge William Finnegan, Judge Steven Gall, Professor Mark Godsey (via telephone), Judge Michael Goulding, Janet Jackson, Judge Melissa Powers, Professor Ric Simmons, Representative Fred Strahorn, Roger Synenberg, and Judge Stephen Wolaver

Members absent: Senator Kevin Bacon and Chief Eliot Isaac

Others present: Administrative Director Michael Buenger, Craig Mayton, Jesse Mosser, Michael Farley, and John VanNorman of the Supreme Court

I. Call to Order. Judge McIntosh called the Task Force meeting to order at 10:10 a.m.

II. Workgroups Updates. The members received the following updates from the Task Force's five workgroups:

1. Police Use of Lethal Force. Workgroup chair Judge McIntosh explained that the workgroup has reviewed the various methods by which police use of lethal force grand juries have been handled in Ohio as well as different approaches currently used in or being proposed by other states. Based upon this review, the workgroup has identified four potential approaches for who handles police use of lethal force grand juries. The specific options are:

- A county prosecuting attorney from a non-contiguous county;
- A county prosecuting attorney randomly selected from a pre-existing pool. The pool could be administered by the Governor's Office, Attorney General's Office, or other office or entity.
- A prosecuting attorney from the Attorney General's Office;
- A prosecuting attorney from some manner of independent government office or entity.

The workgroup is also discussing whether these different approaches to police use of lethal force grand jury proceedings should be limited to police-initiated shoots where a person dies or expanded to included instances where death did not occur.

2. **Grand Jury Secrecy.** Workgroup chair Judge Michelle Earley explained that the workgroup has reviewed other states' current and proposed rules and statutes concerning the secrecy of grand jury proceedings. Additionally, she noted that only a handful of Ohio courts have local rules regarding the production of the grand jury record. As a result, there is no state-wide standard as to who produces and maintains the records of the grand jury proceedings, topics which are key to discussions of secrecy and public access.

Based upon its review, the workgroup believes the secrecy of grand jury proceedings should be loosened. To this end, the workgroup is discussing the following proposal:

- Records of grand jury proceedings would be made by the court reporter or other person as directed by the court;
- The record of the proceedings would be filed with the clerk of the court, but have a presumption of secrecy;
- The public, upon written request, could request access to the records of the record of the proceedings;
- The court would conduct a balancing test to determine if the presumption of secrecy is outweighed by other factors. The precise factors of this balancing test are still under discussion by the workgroup.

The Task Force members then discussed the scope of the secrecy requirements and whether secrecy should be loosened only for police lethal use of force cases.

3. **Role of Judiciary / Prosecution.** Workgroup chairs Judge Stephen Wolaver and Daniel Lutz explained the workgroup is discussing the need to improve jury instructions, which would help promote the independence of the grand jury. To this end, the workgroup has prepared a proposed draft set of amendments to the Ohio Jury Instructions that would do the following:

- Inform grand jurors that they may ask the prosecuting attorney to step outside the grand jury room so that the grand jury may ask questions of the witness without the prosecuting attorney present;
- Add to the current statement of reasons for grand jury secrecy (1) the need of grand jurors to be free of possible influence in their duties and (2) to protect witnesses from undue influence.

4. **Public Education.** Workgroup chair Janet Jackson noted the workgroup has found there to be generally no public understanding of the grand jury system, which undermines public confidence in the system. To address this, the group is discussing options such as the creation of an educational video that can be used by

the courts and other government entities, such in jury selection rooms; the creation of a speaker's bureau; and the preparation of written materials. Ms. Jackson also noted the importance of educating students about the grand jury system.

5. **Rule and Statute Review / Reconciliation.** Workgroup chair Representative Cupp explained the workgroup is currently reviewing those statutory and rule provisions to identify conflicts.

Judge Finnegan then presented to the Task Force his proposal for the creation of position a "truth advocate" position. Under the proposal, an experienced defense attorney would participate in the grand jury proceedings, having the ability to ask questions of the prosecution or witness. However, this individual would not represent the accused.

- VIII. **Scheduling of Future Meeting Dates.** The members scheduled the next two Task Force meetings for May 6th and June 10th from 10:00 a.m. until 2:00 p.m. at a location to be determined.

- IX. **Adjournment.** There being no further business to come before the full Task Force, the Task Force adjourned at 12:00 p.m. to allow workgroups to meet until 2:00 p.m.