



JUSTICE DENIED

A Call for a **New Grand Jury**
Investigation into the Killing of

BREONNA TAYLOR

JUSTICE IN
PUBLIC SAFETY
PROJECT

LDF
DEFEND EDUCATE EMPOWER

A report by the Justice in Public Safety Project of the
NAACP Legal Defense and Educational Fund, Inc. (LDF)
NOVEMBER 2020



ABOUT THE NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) is the nation’s first and premier civil rights legal organization devoted to racial justice. Founded in 1940 under the leadership of Thurgood Marshall, LDF’s mission has always been to achieve racial justice, equality, and an inclusive society and to fulfill the promise of full and equal citizenship for Black people guaranteed by the 14th Amendment to the United States Constitution. Today, LDF continues to promote racial equity in education, voter protection, economic justice, and criminal justice. LDF has been a separate organization from the NAACP since 1957.

LDF’s work to address police violence and misconduct dates back to its inception. Among LDF’s most notable cases was Thurgood Marshall’s defense of Black men who were brutally beaten by police in an effort to force confessions to crimes they did not commit in Groveland, Florida.¹ The LDF team’s tenacious efforts in the Groveland case are captured in the 2013 Pulitzer Prize-winning book, *Devil in the Grove: Thurgood Marshall, the Groveland Boys, and the Dawn of a New America*. LDF litigated *Tennessee v. Garner*,² a seminal case that held, for the first time, that police officers cannot shoot “fleeing felons” who do not pose a threat to officers or members of the public.

In 2015, LDF’s Thurgood Marshall Institute launched a Policing Reform Campaign in the aftermath of the police killings of Eric Garner, Michael Brown, Walter Scott, and Freddie Gray and subsequent public demands for police accountability. After five years of working side-by-side with activists and lawyers across the country, the Campaign is now a permanent project of LDF—the Justice in Public Safety Project (“JPP”).

The JPP uses litigation, policy advocacy, research, community organizing, and strategic communications to: (1) ensure accountability for police brutality and misconduct through community oversight and changes to laws and policies; (2) promote policing and public safety practices that eliminate the pernicious influence of racial and other biases; and (3) support a new paradigm of public safety that drastically reduces the presence of armed law enforcement in communities of color.

Sherrilyn Ifill, President and Director Counsel

National Headquarters
40 Rector Street, 5th Floor
New York, NY 10006-1738

Washington, D.C. Office
700 14th Street, NW, Suite 600
Washington, D.C. 20005

naacpldf.org

ACKNOWLEDGEMENTS

LDF acknowledges the leadership of the following JPP staff who made the review of the grand jury transcripts and drafting of this report possible: Monique Dixon, Director of State Advocacy and Deputy Director of Policy; Puneet Cheema, Manager, JPP; and Agbeko Petty, Attorney, JPP. This effort would not have been possible without the generous pro bono support of Orrick, Herrington & Sutcliffe LLP.

JUSTICE DENIED

A Call for a **New Grand Jury Investigation** into the Killing of **Breonna Taylor**

Table of Contents

I. Introduction	2
II. The Incident	3
III. Overview of Grand Jury Proceedings	3
IV. Bias and Flaws in the Presentation of the Case to the Grand Jury	5
A. The Kentucky Attorney General's Office's Presentation of Evidence to Grand Jurors Revealed a Bias to Protect the Involved Officers	5
B. Kentucky Attorney General Cameron's Prosecutors Failed to Adequately Respond to Grand Juror Inquiries	9
C. Prosecutors From the Kentucky Attorney General's Office Usurped the Grand Jury's Authority to Consider Homicide Charges Against Officers Hankison, Mattingly, and Cosgrove	10
D. The Kentucky Attorney General's Office Failed to Publicly Release Grand Jury Instructions	15
V. Recommendations and Conclusion	16
Endnotes	18



Photo by Jessica Rinaldi/The Boston Globe via Getty Images

I. INTRODUCTION

Ms. Breonna Taylor was a 26-year-old Black woman with “big dreams” of “a lifelong career in health care.”³ Despite working two jobs as an Emergency Room Technician (“E.R.T.”),⁴ Ms. Taylor wrote that “[w]orking in health care is so rewarding. It makes me feel so happy when I know I’ve made a difference in someone else’s life.”⁵ As friends and family explained, Ms. Taylor was driven by her compassion for others.⁶ She not only displayed this compassion through her work as an E.R.T, but also as a friend, mentor, sister, daughter, and niece. She was “willing to build up anyone around her.”⁷ She “loved singing, playing games, cooking and checking up on friends” and often brought family together through her love for card games.⁸ Ms. Taylor would have turned 27 years-old this past June 2020.⁹

In March 2020, Louisville Metro Police Department (“LMPD”) officers shot and killed Ms. Taylor in her home, while executing a search warrant. She had just finished back-to-back shifts and was asleep when the officers broke down her apartment door and forced entry into her home. The deaths of Ms. Taylor, George Floyd, and other unarmed Black persons in 2020 at the hands of law enforcement officers, as well as numerous others over the past decade, have sparked protests and conversations nationwide about systemic racism and extra-judicial police violence perpetrated against people of color in America. The protests and public demands for accountability for these killings were further ignited after Kentucky Attorney General Daniel Cameron (“AG Cameron”) announced on September 23, 2020, that a grand jury,

convened in September 2020, had declined to indict the police officers who shot Ms. Taylor on any charges related to her death. Instead, the grand jury returned with an indictment for only one officer, who was charged with wanton endangerment for shooting into an apartment neighboring Ms. Taylor's own home.

Following this announcement, a member of the grand jury filed a motion seeking, among other things, the release of the transcripts from the proceedings.¹⁰ Jefferson County Circuit Judge Ann Bailey Smith granted the motion and ordered the release of the audio recordings of the grand jury proceedings. This prompted LDF to assemble a team of attorneys to analyze the audio recordings in order to provide insight into any deficiencies in the grand jury process.

Our review of the available materials has led us to conclude that the Kentucky Attorney General's Office presented to this grand jury a biased view of the case that favored the law enforcement officers who killed Ms. Taylor, and departed from the manner in which other cases had been presented to this grand jury by presenting the charges only at the end of the proceedings.¹¹ Contrary to AG Cameron's statements¹² during a September 23, 2020 press conference, he did not present charges of homicide or explain the justification of self-defense.¹³ Instead of providing the grand jury with all relevant evidence, the Kentucky Attorney General's Office cherry-picked facts, dismissed grand jurors' questions, and prevented grand jurors from inquiring into other relevant charges. This led to the predictable result that the officers were not held accountable for the killing of Ms. Taylor. The Attorney General's handling of this grand jury was an abdication of his responsibility, as a prosecutor, to serve the public as an impartial advocate, "to observe the independent status of the grand jury and ensure that indictments are returned in a just manner."¹⁴

What was presented to the grand jury in the case involving the police killing of Ms. Taylor betrayed the public's trust and confidence that accountability and justice would be sought in a fair and thorough presentation of charges before a grand jury. We therefore support the request of Ms. Taylor's family to the Kentucky Office of the Prosecutors Advisory Council for a special prosecutor to resubmit the case to a new grand jury, present additional evidence and applicable charges, and fully explain the principles of self-defense.¹⁵ LDF additionally asks for systemic reforms which are detailed below in Section V.

II. THE INCIDENT

Shortly after midnight on March 13, 2020, plainclothes officers from the LMPD forced entry into Ms. Taylor's apartment while executing what was initially authorized as a no-knock warrant.¹⁶ The warrant was issued to facilitate a search of her apartment on suspicion that she received packages related to alleged illegal activity by her ex-boyfriend involving controlled substances.¹⁷ When the officers breached the door, Kenneth Walker (Ms. Taylor's current boyfriend), believing the officers were intruders, fired one warning shot towards the ground from his licensed gun.¹⁸ The prosecution alleged that Mr. Walker's bullet hit Sergeant Jonathan Mattingly in the leg. However, according to a ballistics report, the bullet that struck Sergeant Mattingly was neither "identified nor eliminated as having been fired" from Mr. Walker's gun.¹⁹ In response to Mr. Walker's warning shot, LMPD officers Jonathan Mattingly, Myles Cosgrove, and Brett Hankison discharged 32 rounds into the dark apartment, without identifying a target and without an ability to see where their bullets would land.²⁰ Five²¹ of these rounds, fired by Sergeant Mattingly and Detective Cosgrove, and another projectile struck Ms. Taylor²², with one causing her death.²³ Former Detective Hankison fired 10 of the remaining twenty-seven rounds.²⁴

III. OVERVIEW OF GRAND JURY PROCEEDINGS

A grand jury in Kentucky consists of a group of citizens who decide whether to formally charge a person with a felony offense. A prosecutor presents evidence of a criminal offense to the grand jury, as well as the list of charges on which the accused may be indicted. A grand jury can also request that prosecutors draft additional charges that may not have been initially presented. Under the Kentucky Rules of Criminal Procedure, grand juries are “charge[d] . . . to inquire into every offense for which any person has been held to answer and for which an indictment or information has not been filed, or other offenses which come to their attention or of which any of them has knowledge.”²⁵ After all evidence is presented, the grand jurors deliberate to determine whether sufficient evidence exists to support an indictment and require the accused to stand trial.

Five months after Ms. Taylor’s killing, AG Cameron responded to sustained public demands for an independent investigation of the incident. Initially, the Jefferson County Commonwealth Attorney was responsible for investigating the conduct of the officers who shot Ms. Taylor.²⁶ However, the Commonwealth Attorney recused himself due to a conflict of interest, and AG Cameron opted to keep the case, rather than appoint a special prosecutor.²⁷ Over the course of three days, beginning on September 21, 2020, a prosecutor and investigator for the Kentucky Attorney General’s Office presented evidence to a grand jury regarding the shooting of Ms. Taylor and the surrounding events. The grand jury listened to interviews and recorded phone calls, viewed videos and photographs, and had the opportunity to ask questions of the prosecutor and investigator. The publicly released recordings of the grand jury hearings do not include the presentation of charges by the Kentucky Attorney General’s Office to the grand jury; however, according to a statement from an anonymous grand juror, “[t]he grand jury was not presented any charges other than the three Wanton Endangerment charges against Detective Hankison.”²⁸

In response to Mr. Walker’s warning shot, LMPD officers Jonathan Mattingly, Myles Cosgrove, and Brett Hankison discharged **32 rounds** into the dark apartment, **without identifying a target and without an ability to see where their bullets would land.** **Five** of these rounds, fired by Sergeant Mattingly and Detective Cosgrove, and another projectile struck Ms. Taylor, with one causing her death. Former Detective Hankison fired **10** of the remaining **twenty-seven rounds.**

LMPD's Public Integrity Unit ("PIU") gathered the majority of the evidence that the Kentucky Attorney General's Office presented to the grand jury. PIU investigated events surrounding Ms. Taylor's killing by reviewing, among other things, videos and photographs of the scene, Ms. Taylor's autopsy report, emails from the individuals involved, and social media posts related to the incident. PIU also interviewed four of Ms. Taylor's neighbors and responding LMPD and Special Weapons and Tactics Team ("SWAT") officers.

Following the investigation, LMPD terminated then-Detective Hankison for violating LMPD policies when he "displayed an extreme indifference to the value of human life" by "wantonly and blindly" firing into Ms. Taylor's apartment without identifying any immediate threat.²⁹ Sergeant Mattingly and Detective Cosgrove, who fired the bullets that struck Ms. Taylor, were placed on administrative leave.

In the September 2020 press conference held by AG Cameron to discuss the grand jury process, he asserted that the warrant was not served as a no-knock warrant,³⁰ that the officers' shots were all discharged in a matter of seconds,³¹ and that two of the LMPD officers who fired into Ms. Taylor's apartment were justified in doing so,³² all of which are disputed points. The only charges brought by the grand jury were charges for wanton endangerment against one of the three officers for shooting into an apartment neighboring Ms. Taylor's apartment.

IV. BIAS AND FLAWS IN THE PRESENTATION OF THE CASE TO THE GRAND JURY

A. The Kentucky Attorney General's Office's Presentation of Evidence to Grand Jurors Revealed a Bias to Protect the Involved Officers.

The evidence presented by the prosecution to the grand jury was biased in five ways. *First*, prosecutors relied heavily on a single witness that supported the LMPD officers' claims that they announced their presence, despite statements from multiple witnesses to the contrary. *Second*, prosecutors failed to present any audio or video evidence from the execution of the search warrant, and prosecutors further failed to adequately explain why no evidence from officers' body cameras was available. *Third*, prosecutors presented irrelevant and prejudicial statements to the grand jury that distracted from the inquiry into the officers' conduct. *Fourth*, the prosecution allowed the grand jury to hear unchallenged testimony from its investigator that the search warrant was valid and obtained in good faith while failing to inform the grand jury of a federal investigation into precisely that question. *Fifth*, prosecutors failed to present evidence indicating the LMPD officers violated department protocol regarding officer-involved shootings.

1. Prosecutors relied heavily on one witness who supported the LMPD officers' version of events, despite contrary statements from multiple witnesses.

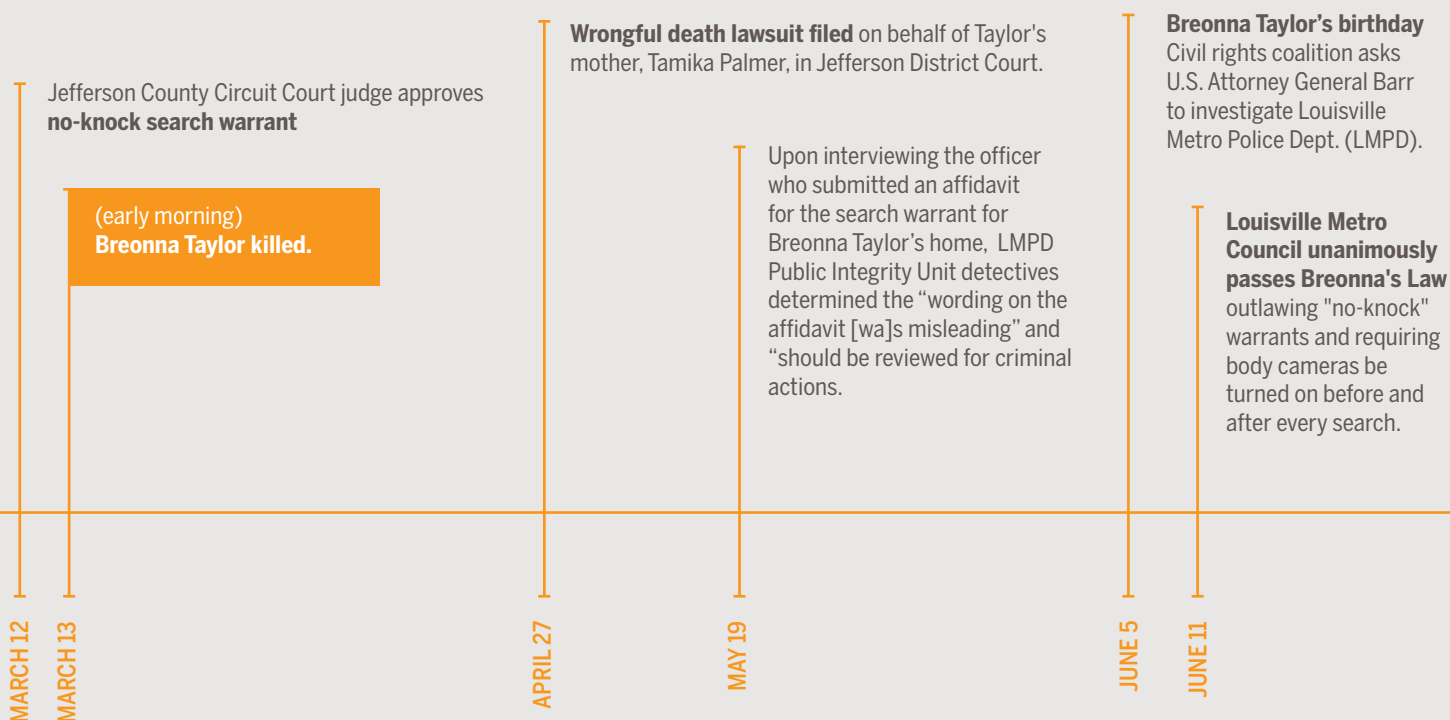
AG Cameron stated that his office's investigation determined that the officers announced themselves before forcibly entering Ms. Taylor's home. He reached this conclusion by crediting the officers' own self-serving statements claiming so. He also relied on one independent witness, who corroborated the officers' statements despite indicia that this singular witness's statement was unreliable. And notably, AG Cameron appeared to wholly disregard critical statements from at least half a dozen witnesses who stated, to the contrary, that they had *not* heard the officers announce themselves.

In explaining that the officers' statements "show[ed] that they . . . knock[ed] and announc[ed],"³³ AG Cameron disregarded the lack of specificity in the officers' account. The evidence presented by the prosecution included statements from the officers claiming that at least one of them had identified

themselves as police while knocking on Ms. Taylor’s door; however, none of the officers clearly identified which officer or officers allegedly announced their presence.³⁴ The prosecution presented the officers’ statements to the jurors without highlighting for the grand jury the lack of specificity which undermines the veracity of their statements.

The prosecution also selectively accepted, as true, only the statement of the sole witness who supported the officers’ accounts—Aarin Sarpee, who occupied a neighboring apartment the night Ms. Taylor was killed—even though it was made long after the incident and contrary to his earlier statement within days of the incident. When questioned a week after the incident, Mr. Sarpee initially told investigators that he did not hear police announce themselves before they broke down Ms. Taylor’s door.³⁵ Two months later, however, in response to further investigator questioning, Mr. Sarpee changed his account, stating he had heard the police say “[t]his is the cops” before breaking down the door. Notably, the officers themselves never mention using this phrase.³⁶ Of all the civilian witnesses interviewed by investigators, Mr. Sarpee was the only witness to claim—at any time—that LMPD had announced themselves before breaking into Ms. Taylor’s home, and he did so only months after the night in question, and contrary to his two initial statements, making his last statement unreliable.

Finally, the prosecution inexplicably disregarded the statements of civilian witnesses whose accounts diverged from the officers’ accounts. Every other civilian witness—Mr. Walker³⁷ and Ms. Taylor’s neighbors Chelsey Napper,³⁸ Cody Etherton,³⁹ Elaine Williams,⁴⁰ Christy Veil,⁴¹ and Jack Schuler⁴²—did not hear police identify themselves while executing the warrant. Notably, Mr. Walker told investigators several times that he never heard the police announce their identity even after Ms. Taylor yelled “[w]ho



SOURCES: Christopher Carrega and Sabina Ghebremedhin, [Timeline Inside the Investigation of Breonna Taylor's killing and its aftermath](#), ABC News, Nov. 17, 2020; LMPD, Public Integrity Unit Investigative Files, *Investigative Reports*, 229, Mar. 18, 2020 – Jul. 2, 2020 (hereinafter PIU Investigative Reports); and LDF, [Civil Rights Coalition Sends Letters to U.S. Attorney General Asking for Investigations into Minneapolis and Louisville Police Departments](#), June 5, 2020.

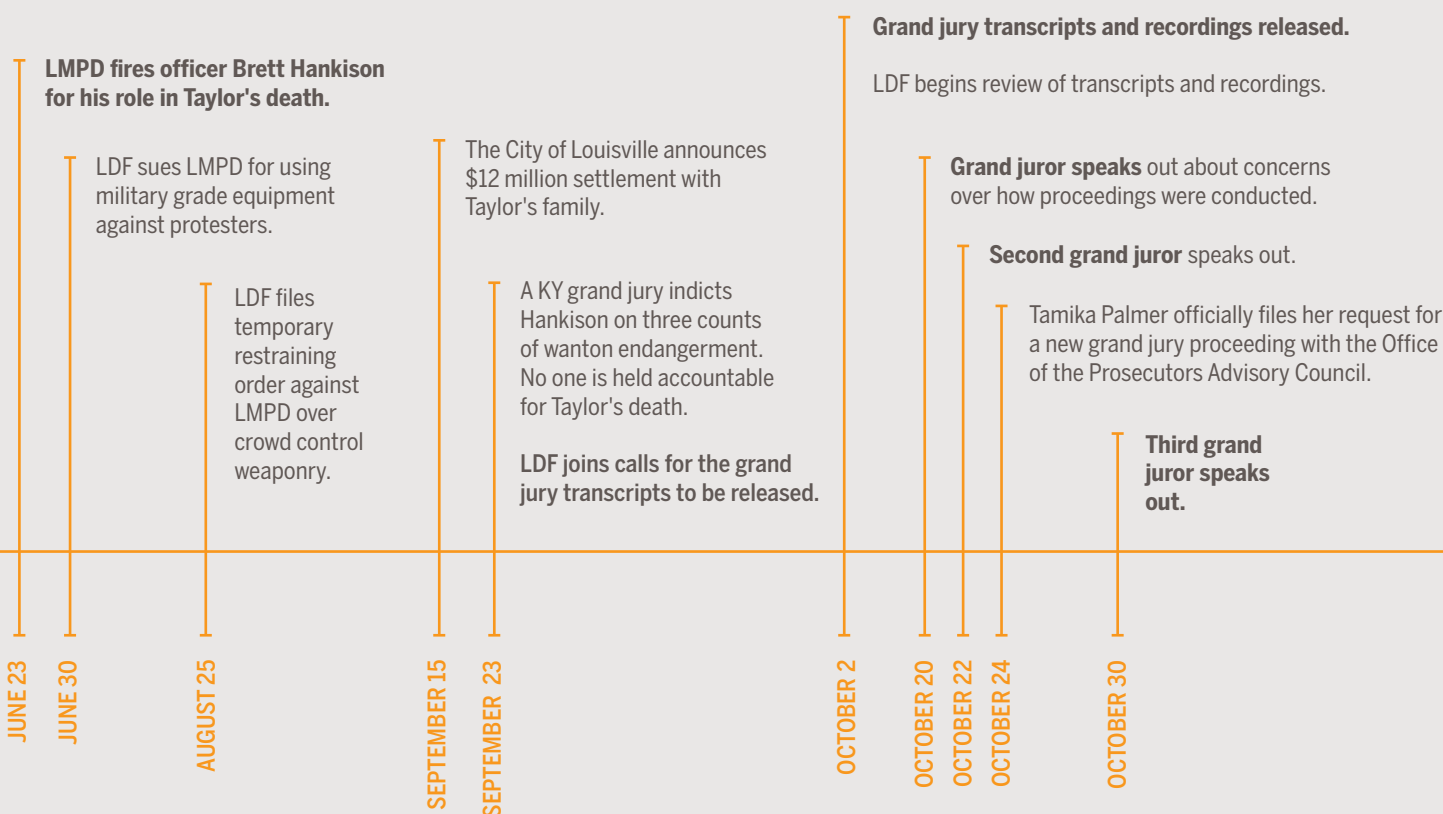
is it?”⁴³ multiple times in an attempt to determine who was knocking on the door. Yet, the prosecution disregarded these witnesses’ testimonies in concluding that the officers had announced themselves before forcibly entering Ms. Taylor’s home.

In sum, the prosecution’s reliance on the officers’ non-specific statements and the less reliable statement of Mr. Sarpee over contrary statements by several other civilian witnesses indicates bias on the part of the prosecution in support of the officers’ account of the incident.⁴⁴

2. Prosecutors failed to present body camera video or audio evidence and failed to explain the lack of such evidence.

In 2012, LMPD launched a public program designed to ensure that all patrol divisions, SWAT, and K9 units would be immediately equipped with body cameras.⁴⁵ Yet, LMPD insisted that on March 13, 2020, none of the seven officers present when Ms. Taylor was killed wore body cameras, and therefore no video or audio was available.⁴⁶ This statement appears to be false.

Detective Anthony James, one of the officers present for the execution of the search warrant, is clearly shown with a body camera on his right shoulder in crime scene photos.⁴⁷ An investigator for the Kentucky Attorney General’s Office, Detective Jeff Fogg, stated, “[w]e do not have any body cam feeds available of the event, the incident of the breach of the door.”⁴⁸ Yet, the prosecution’s presentation failed to explain why such body camera evidence was missing. Additionally, crime scene photos show Detective Cosgrove with a body camera harness attached to his uniform, but without a camera attached; the prosecution never explained this discrepancy.⁴⁹ The prosecution failed to address, in general, why the



SOURCES: [ABC News Timeline](#); Marisa Iati, Breonna Taylor’s mother requests new prosecutor as grand jurors say they were denied evidence, Marisa Iati, [Breonna Taylor’s mother requests new prosecutor as grand jurors say they were denied evidence](#), The Washington Post, Oct. 30, 2020; PIU [Investigative Reports](#) at 230; and LDF, [LDF and Co-Counsel File for Temporary Restraining Order Against Louisville Metro Police Department Over Use of Crowd-Control Weaponry](#), Aug. 25, 2020.



Photo by Alisha JUCEVIC / AFP

officers involved in the execution of the warrant were not wearing body cameras in the first place. When one grand juror asked why the body cameras were not activated, Detective Hall simply responded, “I don’t know.” The prosecution never elaborated on this answer.⁵⁰ Body camera video and audio evidence was arguably of crucial importance to the grand jury’s deliberations and the prosecution’s failure to explain why it was unavailable further hampered its presentation to the grand jury.

3. Prosecutors presented prejudicial and irrelevant questioning of Mr. Walker to the grand jury.

While the Kentucky Attorney General’s Office withheld evidence from the grand jury relating to police conduct that resulted in Ms. Taylor’s killing, they chose to present irrelevant evidence that was prejudicial to Mr. Walker. Mr. Walker was asked about his own prior DUI and drug use during an interview with PIU investigators.⁵¹ Mr. Walker also noted in response to questions from investigators that Ms. Taylor did not use any recreational drugs.⁵² Prosecutors played these statements for the grand jury. These questions were completely irrelevant to the officers’ conduct on the night of the raid, which should have been the focus of the prosecutors’ presentation, and risked undermining Mr. Walker’s integrity and credibility in the eyes of grand jurors. Specifically, in choosing to present these statements to the grand jury, the prosecution risked prejudicing the grand jurors against accepting Mr. Walker’s account and distracting them from the subject of their investigation.

4. Prosecutors misled the grand jury regarding the validity of the search warrant.

Detective Fogg testified early in the grand jury proceedings that the officers had obtained a valid search warrant and were “acting in good faith.”⁵³ However, the PIU files given to the Kentucky Attorney General’s Office indicated that Sergeant Mattingly, whose bullets struck Ms. Taylor, was involved in the acquisition of the warrant, and the veracity of an officer’s affidavit, used to obtain the warrant, is in

question.⁵⁴ AG Cameron indicated during his press conference that a federal investigation into whether the warrant was properly obtained was ongoing.⁵⁵ Therefore, at the very least, Detective Fogg should not have testified as he did, and the prosecution should have noted that the propriety of the warrant was under investigation and thus whether the officers acted in good faith was still an open question. Instead, the prosecution allowed Detective Fogg's statement to stand without further examination or explanation, omitting important potential nuances from the grand jury's deliberations.

5. Prosecutors failed to present evidence showing LMPD officers violated department protocol.

After the raid, the involved officers did not adhere to departmental protocol in ways that undermine the integrity of LMPD's investigation and maintenance of evidence. LMPD's standard operating procedures require officers involved in a shooting to be separated from other involved officers to prevent collusion, be removed from the scene, and accompanied by an LMPD Peer Support Team escort.⁵⁶ Despite these established procedures, several of the involved officers remained at the crime scene, walking freely through the crime scene and creating a risk that the evidence to which they had access may have been tainted. A PIU investigator observed former Detective Hankison "walking in and out of the primary scene."⁵⁷ For example, Detective Hankison approached a SWAT officer at the entryway of Ms. Taylor's apartment.⁵⁸ Before being told to leave, former Detective Hankison attempted to ask the SWAT officer questions relating to evidence.⁵⁹ Another SWAT officer explained he had to separate Detective Cosgrove and former Detective Hankison once he realized they were involved in the shooting.⁶⁰

Several of the involved officers also violated departmental policy during their visit to the hospital where Sergeant Mattingly was admitted. A PIU investigator stated that, while at the hospital, he noticed Detective James and Detective Michael Nobles—both of whom were involved in the raid—"standing in a circle talking."⁶¹ When he approached them, Detective James "informed [him that] he had collected Sergeant Mattingly's gun and wallet [while riding in the ambulance with him]"⁶² and placed them into Detective Nobles' work vehicle."⁶³ Former Police Chief Steve Conrad also indicated his "surprise[]" to see former Detective Hankison at the hospital because "officer[s] involved in a shooting incident [are] usually transported to the PIU office per normal protocol."⁶⁴ The PIU investigative file noted that former Detective Hankison "deviated from the standard protocol when he traveled unattended to University of Louisville Hospital having contact with CID command and Police Chief Steve Conrad."⁶⁵ The prosecution did not address LMPD's failure to follow various department protocols in its presentation of evidence, including the failure to properly preserve critical evidence, such as Sergeant Mattingly's gun, and the risk of evidence tampering by allowing involved officers to walk around the crime scene. These facts undermine LMPD's investigation, the consequences of which must be independently evaluated.⁶⁶

B. Kentucky Attorney General Cameron's Prosecutors Failed to Adequately Respond to Grand Juror Inquiries

Throughout the grand jury proceedings, the prosecution routinely ignored questions from the grand jury in several ways, preventing the grand jurors from obtaining clarification about critical matters in the case.

For example, as discussed above, one juror asked why body cameras were not activated and Detective Hall answered, "I don't know."⁶⁷ The prosecution apparently did not make any additional effort to answer this question or present a witness who could. When a grand juror asked Detective Fogg whether the car that was subject to the search warrant belonged to Ms. Taylor, Detective Fogg responded by describing the car without answering the question.⁶⁸ In response to a juror asking how many interviews

Detective Fogg had heard where an officer could not describe what was going on, Detective Fogg stated it was “not uncommon,” again failing to directly answer a grand juror’s question.⁶⁹ The prosecution neither resolved nor returned to any of these questions, leaving them unanswered.

Prosecutors also dismissed at least two key inquiries from the jurors bearing on the quality of PIU’s investigation. *First*, when a grand juror asked why the officers interviewing Mr. Walker provided *Miranda* warnings to him only after the interview began, Detective Fogg responded that investigators were allowed to speak to Mr. Walker and “get to know [him]” before reading him his *Miranda* rights.⁷⁰ By dismissing this inquiry, Detective Fogg provided cover for the officers who interrogated Mr. Walker about the night in question before receiving his *Miranda* waiver, contrary to the requirements of *Miranda* and its progeny.⁷¹ Instead of pressing Detective Fogg on this inaccuracy or explaining the appropriate legal standard for the grand jury’s benefit, the prosecution moved on, ultimately preventing the grand jury from unearthing further potential problems in the PIU’s investigation. *Second*, jurors asked Detective Hall about trigger modifications potentially made by officers to their guns. Detective Hall noted, “[s]ometimes officers will make [their] triggers easier to pull,” however, he did not know whether any of weapons used on March 13 were modified.⁷² Yet again, the prosecution did not adequately pursue a line of inquiry relevant to the grand jury’s investigation, failing to adequately respond to the grand jury’s questions.

C. Prosecutors From the Kentucky Attorney General’s Office Usurped the Grand Jury’s Authority to Consider Homicide Charges Against Officers Hankison, Mattingly, and Cosgrove

Even before empaneling the grand jury, AG Cameron had apparently concluded that the officers’ actions were justified by self-defense. Following the announcement of charges in September 2020, AG Cameron stated that the grand jury found Sergeant Mattingly and Detective Cosgrove to have been “justified in the return of deadly fire after having been fired upon.”⁷³ This, he said, barred criminal charges. However, according to several anonymous grand jurors, they were not asked to consider any charges against the officers or told about self-defense. These jurors revealed that “the grand jury didn’t agree that certain actions were justified” since they were “not given the opportunity to deliberate on those charges. . . .”⁷⁴

In tailoring the presentation of evidence to prevent the grand jury from even considering legitimate potential charges, and reaching his own conclusion about the case, AG Cameron usurped the grand jury’s duties by hampering its ability to inquire into potential applicable offenses for the officers’ conduct that led to Ms. Taylor’s death. The failure to present and contextualize evidence supporting homicide charges, along with the prosecution’s failure to explain the potential application of self-defense principles to the grand jury, was wholly deficient.

Kentucky state law authorizes several homicide charges that may have been warranted by the officers’ conduct, including murder,⁷⁵ manslaughter in the first degree,⁷⁶ manslaughter in the second degree,⁷⁷ and reckless homicide.⁷⁸ The grand jury should have had an opportunity to consider whether the officers’ actions, both before and during the execution of the search warrant, merited such charges.

1. The grand jury did not have an opportunity to consider the officers' culpability for their reckless behavior, which led to the fatal shooting of Breonna Taylor.

a. Grave Errors in the Pre-Execution of the Search Warrant

Even before the events of March 13, 2020, there is evidence that the officers were haphazard in their approach to executing the search warrant on Ms. Taylor's home. Former Detective Hankison was scheduled for a day off on March 13, but he signed on to the warrant execution team in response to a staffing email requesting "bodies."⁷⁹ The location was described as a "soft target"⁸⁰ that "shouldn't be a problem" because, as described by one officer, the occupants were just a woman and small child.⁸¹ Because the officers assumed the warrant was being executed in an "easy location," the warrant execution team was comprised of "older guys."⁸² Former Detective Hankison admitted that he normally did not work with others in the "hodgepodge of people thrown together" to execute the warrant.⁸³

With respect to the preoperational briefing, former Detective Hankison stated, "the information given at the briefing was limited."⁸⁴ Some officers believed that there was a woman and child present,⁸⁵ others believed only Ms. Taylor would be inside the apartment,⁸⁶ and at least one officer thought Ms. Taylor's ex-boyfriend would be present⁸⁷ even though other law enforcement officers had already made contact with him earlier that evening.⁸⁸ Notably, SWAT never received a risk assessment matrix despite "LMPD policy require[ing] [the Criminal Interdiction Division,] to provide SWAT with all search warrant matrices whether SWAT is utilized or not."⁸⁹

b. Grave Errors in the Execution of the Search Warrant

Further, there was no formal plan between the seven officers with respect to the actual serving of the search warrant,⁹⁰ and this lack of preparation and professionalism carried over to execution of the search warrant. When asked by investigators to recount their lineup at the door, the officers had difficulty recalling where each officer was placed.⁹¹ When explaining their positioning before executing the warrant,

Throughout the grand jury proceedings, the prosecution **routinely ignored questions from the grand jury** in several ways, preventing the grand jurors from obtaining clarification about critical matters in the case. For example, as discussed above, one juror asked why body cameras were not activated and Detective Hall answered, **"I don't know."**



Photo by Jon Cherry/Getty Images

Detective Cosgrove admitted that their alignment left Detective Nobles in a “vulnerable position” without a cover.⁹² In a last minute attempt to correct this error, Detective Cosgrove “spe[]d walk[]ed” to reposition himself behind Detective Nobles.⁹³

Despite characterizing the location as “easy,” the officers employed a dangerous tactic to breach Ms. Taylor’s apartment because it required three officers to be directly in the entryway by lining up three across.⁹⁴ “When questioned whether it was tactically correct or proper in any capacity for three law enforcement officers to be positioned in what is commonly referenced to as the ‘Fatal Funnel,’ [SWAT Lieutenant Dale Massey] replied ‘absolutely not.’”⁹⁵ “When questioned further if he has ever seen a tactic where three individuals are punched out with their weapons in front of an entry door, he stated, ‘[n]o, you would never put yourself in that situation.’”⁹⁶

Shortly after knocking on Ms. Taylor’s door, officers breached the apartment with a battering ram.⁹⁷ In response, Mr. Walker fired a warning shot toward the ground with his registered firearm.⁹⁸ Although prosecutors alleged that this shot struck Sergeant Mattingly in the leg, according to a ballistics report, the bullet that struck Sergeant Mattingly was neither “identified nor eliminated as having been fired” from Mr. Walker’s gun.⁹⁹ Sergeant Mattingly reported that he returned fire, shooting four times before retreating behind the door.

Despite best practices requiring officers to identify targets before firing,¹⁰⁰ Sergeant Mattingly, while behind the door, reached back into Ms. Taylor’s apartment and fired two more gunshots.¹⁰¹ Detective Hankinson fired numerous shots from outside the apartment, through a glass door and at least one window, and into the apartment despite coverings (i.e., curtains or blinds) that blocked the officer’s views of the inside.¹⁰² While former Detective Hankinson’s decision to fire “blindly” served as the basis for the Kentucky Attorney General’s Office presentment of charges of wanton endangerment, the grand jury was never presented with homicide charges based on former Detective Hankinson’s conduct, along with that of Sergeant Mattingly and Detective Cosgrove, who collectively fired 22 rounds into Ms. Taylor’s apartment.¹⁰³ In fact, LMPD Police Chief Robert Schroeder described former Detective Hankinson’s behavior, in a termination letter, as showing “extreme indifference to the value of human life”¹⁰⁴ while a responding SWAT officer characterized his behavior during an interview with the PIU as an “egregious act.”¹⁰⁵ Detective Cosgrove’s statements are equally troubling because, upon entering the apartment, he stated he was “immediately overwhelmed with darkness,”¹⁰⁶ thus unable to see at whom he was firing his gun. Detective Cosgrove described being disoriented and unable to see clearly as he fired into Ms. Taylor’s apartment from the doorway.¹⁰⁷ Moreover, SWAT Sergeant Joel Casse explained in an interview that he perceived a “disconnect” between his SWAT unit’s focus on the preservation of life and the involved officers’ apparent prioritization on the preservation of evidence and their “fear of los[ing] [] evidence.”¹⁰⁸

2. The prosecution team substituted its own judgement for the grand jury’s.

Rather than allow the grand jury to determine the legality of the officers’ conduct in executing the search warrant, AG Cameron drew his own conclusion that the officers’ actions were justified as self-defense,¹⁰⁹ and precluded the grand jury from considering homicide charges against the involved officers. Particularly suspicious is the timing of the prosecution team’s presentation of charges, which—unlike other cases heard by the same grand jurors—occurred at the end of the proceedings. Two grand jurors noted that, of the “dozens of cases” the grand jury heard, this was the only one where the prosecution “waited until the end of the [two and a half] day proceeding to give the charges they wanted the [grand] jury to consider, rather than at the start.”¹¹⁰ This striking difference led one juror to think “[the prosecution] deliberately did it backwards.”¹¹¹

Additionally, AG Cameron’s judgment that the officers acted in self-defense was particularly unusual given the high bar for establishing self-defense in these circumstances under Kentucky law. Kentucky state law does not provide a self-defense justification for an offense involving wantonness or recklessness toward innocent persons.¹¹² Thus, AG Cameron substituted his own judgement not only in determining that the officers were justified in using deadly force in defense of their own lives, but also in determining that they did not act wantonly or recklessly toward an innocent person when they shot and killed Ms. Taylor. Notably, the prosecution did not appear to inform the jury that LMPD terminated former Detective Hankison for “display[ing] an extreme indifference to the value of human life” by “wantonly and blindly” firing into Ms. Taylor’s apartment.¹¹³ The Kentucky Attorney General’s Office should have presented and explained all the evidence and allowed the jurors to determine whether the officers’ killing of Ms. Taylor was justified, explaining that self-defense is unavailable as a justification for an offense involving wantonness or recklessness toward innocent persons.¹¹⁴

Finally, despite suggestions by AG Cameron that uncertainty as to which officer fired the fatal shot precluded homicide charges, the Federal Bureau of Investigation (“FBI”) examiner, using the same microscope as the Kentucky authorities, concluded that Detective Cosgrove fired the fatal shot.¹¹⁵ The FBI found sufficient forensic detail to conclude that Detective Cosgrove fired the bullet that killed Ms. Taylor.¹¹⁶ Thus, AG Cameron reached his own conclusion—contrary to the FBI—that there was no clear evidence as to who shot Ms. Taylor before deciding not to present homicide charges to the grand jury, further usurping and hampering the grand jury’s investigation.

Photo by Jon Cherry/Getty Images



D. The Kentucky Attorney General's Office Failed to Publicly Release Grand Jury Instructions

Under the Kentucky Rules of Criminal Procedure, prosecutors should have instructed the grand jury that they were “charge[d] . . . to inquire into *every offense* for which any person has been held to answer and for which an indictment or information has not been filed, *or other offenses which come to their attention or of which any of them has knowledge*.”¹¹⁷ In addition, and perhaps most importantly, the prosecution should have reminded the grand jury that they had the power to request indictments beyond what prosecutors suggested, and that the prosecutors were themselves bound by the Kentucky Rules of Criminal Procedure to draft those indictments when requested.¹¹⁸

The Kentucky Attorney General's Office did not grant the public access to any of the charges, the legal instruction provided to the grand jury, or the prosecution's recommendations, arguing that secrecy of the grand jury proceedings is “vital to the proper administration of justice.”¹¹⁹ In reality, however, a court may order the release of information from grand jury proceedings¹²⁰ and while Kentucky Rules of Criminal Procedure prohibit the presence of others while the grand jury is deliberating or voting, no rules specifically prohibit the release of the prosecution's legal instruction to the jury, recommendations and charges.¹²¹ AG Cameron's refusal to release these materials casts doubt on the integrity of the grand jury process in this case. These doubts are only deepened by an anonymous grand juror's released statement:

The grand jury was not presented any charges other than the three Wanton Endangerment charges against [former] Detective Hankison. The grand jury did not have homicide offenses explained to them. The grand jury never heard anything about those laws. Self defense or justification was never explained either. Questions were asked [by jurors] about additional charges and the grand jury was told there would be none because the prosecutors didn't feel they could make them stick. The grand jury didn't agree that certain actions were justified, nor did it decide the indictments should be the only charges in the Breonna Taylor case. The grand jury was not given the opportunity to deliberate on those charges and deliberated only on what was presented to them.¹²²

An anonymous grand juror has also publicly stated that following the prosecution's recommended charges against former Detective Hankison, “almost all of the [grand jurors] at once said, ‘[i]sn't there anything else?’” and explicitly “asked [prosecutors] more than once if any other charges could be brought.”¹²³

The Kentucky Attorney General's Office should publicly release the prosecutor's recommendations and grand juror instructions in order to definitively establish the charges presented to the grand jury.



JUSTICE FOR

BREONNA TAYLOR NOW

V. RECOMMENDATIONS AND CONCLUSION

The Kentucky Attorney General's Office did not make a fair and comprehensive presentation to the grand jury about the involved officers' conduct that led to Ms. Taylor's killing, but instead displayed an inappropriate bias in favor of the officers. This bias was evidenced by the prosecution's decision to omit homicide charges based on an erroneous interpretation of Kentucky state law, the selective presentation of evidence that benefited the officers, and the failure to respond adequately to grand juror inquiries that could have led to unfavorable facts about the officers.

The Kentucky Governor and Louisville Metro Council should institute the systemic reforms below in all cases of law enforcement activity resulting in the death of a member of the public to promote transparency and accountability, and to make clear that the loss of any life at the hands of law enforcement will be handled with the utmost gravity.

1

Appoint a Special Prosecutor to Resubmit Ms. Taylor's Case to a New Grand Jury.

Consistent with the request of Ms. Taylor's family, AG Cameron, through the Office of the Prosecutors Advisory Council, should appoint a special prosecutor to resubmit the case of the LMPD officers' actions in the shooting of Ms. Taylor to a new grand jury, present all relevant evidence and applicable charges, allow the grand jury to pursue additional charges beyond the prosecutors' recommendation where the grand jury deems it appropriate, and fully explain the principles of self-defense and their applicability to Ms. Taylor's death.¹²⁴

2

Establish a Special Prosecutor in Cases Involving Law Enforcement. The Governor should call for legislation to establish a process for the appointment of special prosecutors in cases involving potential criminal wrongdoing by law enforcement officers, governed by standards that ensure independent investigation and impartial prosecution of law enforcement officers, when warranted.¹²⁵

3

Promote Transparency in the Investigation Process. The Governor should issue an executive order and Louisville Metro Council members should pass an ordinance,¹²⁶ requiring that the entire file of the criminal and administrative investigations evaluating the officers' actions pertaining to their involvement in a civilian death be released to the public, consistent with the manner in which PIU has publicly released its investigative file for Ms. Taylor's killing, to allow the public to evaluate the thoroughness of the investigations and propriety of the conclusions reached.¹²⁷

4

External Review Process to Ensure Neutrality in the Presentment of Evidence.

The Governor should call for legislation to establish a process to review charges and supporting evidence presented by prosecutors in cases involving fatalities by law enforcement, involving diverse members of the criminal justice system and advocates, to ensure that the charges and presentation of evidence to the grand jury are neutral and unbiased.

5

Conduct After-Action Review of Critical Incidents. The Governor should establish a commission of independent, qualified experts from uninvolved jurisdictions, including criminal justice reform advocates, to conduct after-action reviews of incidents resulting in civilian death or serious injury caused by a law enforcement officer and identify specific changes to police department policies and practices to be implemented to prevent future, unnecessary deaths.¹²⁸ Louisville Metro Council members should pass an ordinance requiring such after-action reviews for critical incidents involving LMPD officers.

Endnotes

- 1 See, *Shepherd v. Florida*, 341 U.S. 50 (1951).
- 2 471 U.S. 1 (1985).
- 3 Richard A. Oppel Jr., Derrick Bryson Taylor and Nicholas Bogel-Burroughs, *What to Know About Breonna Taylor's Death*, New York Times (Oct. 30, 2020), <https://www.nytimes.com/article/breonna-taylor-police.html>.
- 4 Doug Stanglin, Tessa Duvall and Andrew Wolfson, *Fact Check: Viral meme listing Breonna Taylor 'truths' includes misinformation*, USA Today (Sep. 26, 2020), <https://www.usatoday.com/story/news/factcheck/2020/09/26/fact-check-posts-breonna-taylor-truths-in-clude-misinformation/3531905001/>.
- 5 Ari Shapiro, Jason Fuller, Becky Sullivan, *As The Nation Chants Her Name, Breonna Taylor's Family Grieves A Life 'Robbed'*, NPR (June 4, 2020), <https://www.npr.org/2020/06/04/869930040/as-the-nation-chants-her-name-breonna-taylors-family-grieves-a-life-robbed>.
- 6 *Id.*
- 7 ZZ Packer, *The Empty Facts of The Breonna Taylor Decision*, The New Yorker (Sept. 27, 2020), <https://www.newyorker.com/culture/cultural-comment/the-empty-facts-of-the-breonna-taylor-decision>.
- 8 Shapiro, *supra* note 5.
- 9 *Id.*
- 10 Pl.'s Mot. for Release of Grand Jury Transcripts/Recordings/Reports, *Anonymous Grand Juror #1 v. Commonwealth of Kentucky*, 20-CI-5721 (Jefferson Circuit Court, filed Sept. 28, 2020) (available at: <https://interactive.whas11.com/pdfs/scannedmotiongirelease.pdf>).
- 11 Marcus Green, *Grand jurors say Cameron's office was asked if more charges could be considered in Breonna Taylor case*, WDRB (Oct. 28, 2020), https://www.wdrb.com/news/breonna-taylor/grand-jurors-say-camersons-office-was-asked-if-more-charges-could-be-considered-in-breonna/article_dfae75d8-1986-11eb-8ed6-5f0053270c47.html
- 12 Press Conference: Breonna Taylor Investigation, Kentucky Attorney General Daniel Cameron (Sept. 23, 2020), at 00:15:00, 00:35:00, https://www.facebook.com/watch/live/?v=369671464066927&ref=watch_permalink (Hereinafter Press Conference).
- 13 Marisa Lati, *Fatal shooting of Breonna Taylor was 'not a race thing,' officer says in first public interview*, Washington Post (Oct. 22, 2020), <https://www.washingtonpost.com/nation/2020/10/20/breonna-taylor-grand-juror-says-no-homicide-charges-offered/>.
- 14 *Commonwealth v. Baker*, 11 S.W.3d 585, 588 (Ky. App. 2000).
- 15 Tamika Palmer, *Request to Kentucky Office of the Prosecutors Advisory Council* (Oct. 28, 2020), <https://htv-prod-media.s3.amazonaws.com/files/2020-10-28-20-pac-application-for-relief-w-cover-letter-1603911346.pdf>.
- 16 The search warrant was authorized as a no-knock warrant; however, the officers were instructed to use a knock-and-announce approach instead during a pre-warrant execution briefing. Grand Jury Audio Recording, Day 1, (BT Sept. 21-4), 01:10:22.
- 17 Darcy Costello and Tessa Duvall, *Why were police at Breonna Taylor's home? Here's what an investigative summary says*, USA Today (Sept. 24, 2020), <https://www.usatoday.com/story/news/nation/2020/09/04/report-details-why-louisville-police-wanted-search-breonna-taylors-home/5706161002/>.
- 18 Ivan Pereira, *Kenneth Walker, boyfriend of Breonna Taylor, sues police and city of Louisville for immunity*, ABC News (Sept. 1, 2020), <https://abcnews.go.com/US/kenneth-walker-boyfriend-breonna-taylor-sues-police-city/story?id=72754382>.
- 19 Public Integrity Unit Investigative Files, *Report of Forensic Laboratory Examination*, Jefferson Laboratory Branch (June 1, 2020), <https://louisville-police.org/DocumentCenter/View/1803/PIU-20-019-CSU-Lab-Evidence-Reports> (hereinafter *Report of Forensic Laboratory Examination*).
- 20 Grand Jury Audio Recording, Day 1 (BT Sept. 21-1), 00:34:40-00:35:35; Grand Jury Audio Recording, Day 2 (BT Sept. 22-3), 00:53:50-00:55:53 (Lt. Massey); Public Integrity Unit Investigative Files, Interview Transcript (Det. Cosgrove) 111-12, <https://louisville-police.org/DocumentCenter/View/1808/PIU-20-019-Transcripts>.
- 21 According to the autopsy report, Ms. Taylor was struck with 5 bullets and a 6th wound described as “a slightly deformed orange and gray metal projectile” that is “oval.” See Public Integrity Unit Investigative File, *Autopsy Report of Breonna Taylor* 9, <https://louisville-police.org/DocumentCenter/View/1816/PIU-20-019-Medical-Reports>. During the September 23, 2020 press conference, AG Cameron attributed this to the 6th shot, but later retracted that statement, stating that it was a “projectile.” See Press Conference, *supra* note 12 at 00:09:26, 00:27:02.
- 22 Press Conference, *supra* note 12 at 00:09:26-00:09:54, 00:27:02.

23 *Id.* at 00:09:54; Grand Jury Audio Recording, Day 3 (BT Sept. 23-1), 01:14:40-01:14:57. Det. Cosgrove fired 16 rounds into Ms. Taylor's apartment, Sgt. Mattingly fired 6 rounds, and former Det. Hankison fired 10 rounds. Grand Jury Audio Recording, Day 1 (BT Sept. 21-1), 00:34:40-00:35:35.

24 Grand Jury Audio Recording, Day 3 (BT Sept. 23-1), 00:13:30-00:14:00.

25 Ky. RCr 5.02.

26 Tessa Duvall, *What to know about Daniel Cameron, the attorney general deciding the Breonna Taylor case*, Louisville Courier-Journal (July 15, 2020), <https://www.courier-journal.com/story/news/2020/07/15/who-is-kentucky-attorney-general-daniel-cameron-deciding-breonna-taylor-case/5400028002/>.

27 *Id.* Specifically, KRS Section 15.733(4) permits AG Cameron to appoint a special prosecutor in the event that a prosecuting attorney is disqualified. Given the questions that have been raised over the prosecution of law enforcement officers involved in the killing of Ms. Taylor, this provision appears to be available to the AG's office.

28 Statement of Grand Juror No. 1, Oct. 20, 2020 (available at: <https://twitter.com/gabegutierrez/status/1318628064339910658/photo/1>); see Keya Vakil, *Juror: The Only Charges We Were Presented With Had Nothing to Do With Breonna Taylor's Killing*, Courier Newsroom (Oct. 21, 2020), <https://couriernewsroom.com/2020/10/21/breonna-taylor-grand-juror-statement/>.

29 Louisville Metro Police Department Office of the Chief, *Brett Hankison's Termination Letter* (June 19, 2020), <https://interactive.whas11.com/pdf/HankisonTermination.pdf> (hereinafter *Brett Hankison's Termination Letter*).

30 Press Conference, *supra* note 12 at 00:07:46-00:08:19.

31 *Id.* at 00:09:30-00:09:47.

32 *Id.* at 00:11:47-00:11:53, 00:15:14-00:15:21.

33 *Id.* at 00:24:30-00:25:00.

34 See, e.g., Grand Jury Audio Recording, Day 1 (BT Sept. 21-4), 00:57:20-00:57:54 (Sergeant. Mattingly testifying that he was "the only one" knocking; others were saying "Police, search warrant."); Grand Jury Audio Recording, Day 2 (BT Sept. 22-1), 00:13:30-00:13:40 (former Det. Hankison: "A few detectives in front of me . . . yell[ed] 'Police, search warrant'"); *Id.* at 1:21:00 (Det. Campbell: "We knocked on the door, we announced "'Police"' multiple times[.]"); *Id.* at 1:31:10 (Det. Campbell: "Sergeant Mattingly knocked repeatedly at the door and . . . other detectives were saying 'Police.'"); Grand Jury Audio Recording, Day 2 (BT Sept. 22-2R), 00:12:35-00:13:04 (Lt. Hoover: "We knocked on the door, said "Police" . . . knocked again, said 'Police' . . . knocked again, yelled "Police, search warrant[.]").

35 Grand Jury Audio Recording, Day 2 (BT Sept. 22-5R), 00:48:01-00:49:45.

36 *Id.* at 00:50:10-00:51:00. See also Grand Jury Audio Recording, *supra* note 34.

37 Grand Jury Audio Recording, Day 2 (BT Sept. 22-2R), 01:04:54-01:05:54.

38 Grand Jury Audio Recording, Day 2 (BT Sept. 22-5R), 00:03:50-00:07:50.

39 *Id.* at 00:17:15-00:17:19.

40 *Id.* at 00:29:05-00:29:16.

41 *Id.* at 00:29:42-00:33:28.

42 *Id.* at 00:34:14-00:47:20.

43 Grand Jury Audio Recording, Day 2 (BT Sept. 22-2R), 01:04:54-01:05:54; 01:19:01-01:19:55. (Walker only heard officers identify as police *after* he had called 911, his mother, and Ms. Taylor's mother).

44 AG Cameron, endorsed by the Kentucky State Fraternal Order of Police and sheriffs across the state, has been explicit in his pro-police stance, previously stating that he would advocate for law enforcement and "mak[e] sure that they know they have a voice in the attorney general's office." Cory McCauley, *Fraternal Order of Police endorses Daniel Cameron for Attorney General*, WBKO News (Sept. 27, 2019), <https://www.wbko.com/content/news/Fraternal-Order-of-Police-endorses-Daniel-Cameron-for-Attorney-General-561558711.html>; see also Press Conference: Kentucky State Fraternal Order of Police 2019 Attorney General Endorsement, Kentucky Attorney General Daniel Cameron, at 00:03:00-00:03:05, https://www.facebook.com/watch/live/?v=382348875776337&ref=watch_permalink.

45 See Brain Schaefer et al., *LMPD's Wearable Video System Implementation: Year One Report*, 5-6 (2016) (reviewing history of policy and implementation in 2015), <https://www.louisville-police.org/ARCHIVE/VIEWFILE/ITEM/94>.

46 Peter Aitken, *New Details Emerge from night Breonna Taylor was shot after review of over 1,200 crime scene photos*, Fox News (Sept. 5, 2020), <https://www.foxnews.com/us/photos-details-breonna-taylor-shot> (noting "then-LMPD Chief Steve Conrad insisted that there was 'no body-worn video cameras' to share from the shooting." Conrad said, "[t]his incident was related to the execution of a search warrant by members of our Criminal Interdiction Division, and some of the officers assigned to this division do not wear body-worn video systems.").

47 Travis Ragsdale and Jason Riley, *LMPD photos show at least 1 officer wearing body cam on night of Breonna Taylor raid*, WDRB (Oct. 1, 2020), https://www.wdrb.com/in-depth/lmpd-photos-show-at-least-1-officer-wearing-body-cam-on-night-of-breonna-taylor/article_8a31d070-eebe-11ea-8dac-1f2491f002dc.html.

48 Grand Jury Audio Recording, Day 1 (BT Sept. 21-2), 00:43:40.

49 Public Integrity Unit Investigative Files, photograph 876 (on file at LDF), available at <https://photos.google.com/share/AF1QipNFjI-BR3nsSmgmiTvGJbBrgvk44Z4DnyrO70jm-qDAzGVhlUkeLDyWX5kBapMQvxQ/photo/AF1QipM3Df5we9LiC9MYzYv1Qq1HO-QeO7lfXnterPzs3?key=ZmdQczFmUERRaFRyZ2x2N3Z4MGhLak05MEZPOENB>.

50 Grand Jury Audio Recording, Day 3 (BT Sept. 23-2), 0:01:48-00:01:59.

51 Grand Jury Audio Recording, Day 2 (BT Sept. 22-3), 00:17:39-00:22:27.

52 Grand Jury Audio Recording, Day 2 (BT Sept. 22-3), 00:18:10-00:18:28.

53 Grand Jury Audio Recording, Day 1 (BT Sept. 21-2), 00:36:13-00:36:17.

54 LMPD, Special Investigations Division, Public Integrity Unit, *Investigative Reports*, 148-51 and 229-30, Mar. 18, 2020 – Jul. 2, 2020 (hereinafter *PIU Investigative Reports*).

55 Press Conference, *supra* note 12 at 00:06:45.

56 Louisville Metro Police Department Standard Operating Procedures, 475-78, <https://www.louisville-police.org/DocumentCenter/View/615/Standard-Operating-Procedures-PDF>.

57 *PIU Investigative Reports*, *supra* note 54 at 223.

58 *Id.* at 147.

59 *Id.*

60 *Id.* at 119.

61 *Id.* at 57.

62 Grand Jury Audio Recording, Day 1 (BT Sept. 21-4) 00:36:40-00:37:10.

63 *PIU Investigative Reports*, *supra* note 54 at 57.

64 *Id.* at 99.

65 *Id.* at 223.

66 CID Major Kim Burbrink, Sergeant Mattingly, and Detectives Cosgrove, Hankison, Jaynes, James, Campbell and Nobles are currently under internal investigation for their involvement in Ms. Taylor’s case. Ivan Pereira and Stephanie Wash, *6 Louisville officers under internal investigation over Breonna Taylor’s death*, ABC News (Sept. 21, 2020), <https://abcnews.go.com/US/louisville-officers-internal-investigation-breonna-taylor-death/story?id=73154134>; *LMPD reassigns commander accused of pressuring investigators in Breonna Taylor probe*, WLKY (Oct. 21, 2020), <https://www.wlky.com/article/lmpd-reassigns-commander-accused-of-pressure-investigators-in-breonna-taylor-probe/34442238>.

67 Grand Jury Audio Recording, Day 3 (BT Sept. 23-2) 00:01:48-00:1:58:00.

68 Grand Jury Audio Recording, Day 2 (BT Sept. 22-3), 00:02:11-00:03:10.

69 Grand Jury Audio Recording, Day 2 (BT Sept. 22-4), 01:15:55-01:16:30.

70 Grand Jury Audio Recording, Day 2 (BT Sept. 22-3), 00:31:02-00:31:31.

71 See *Berghuis v. Tompkins*, 560 U.S. 370, 380 (2010) (“The *Miranda* Court formulated a warning that must be given to suspects before they can be subjected to custodial interrogation. The substance of the warning still must be given to suspects today.”). During the interview and prior to signing the waiver, Mr. Walker also states that he *had* been threatened by officers who told him he “was going to jail for the rest of his life,” threatened to release a canine on him and stated it was “unfortunate” that Mr. Walker had not been hit by any bullets. Public Integrity Unit Investigative Files, Interview Transcripts (Kenneth Walker), available at <https://louisville-police.org/DocumentCenter/View/1808/PIU-20-019-Transcripts>.

72 Grand Jury Audio Recording, Day 2 (BT Sept. 22-6R), 00:24:20-00:25:19.

73 Andrew Wolfson, *Kentucky’s self-defense laws negated possible homicide charges in Breonna Taylor’s death*, Louisville Courier-Journal (Sept. 23, 2020), <https://www.courier-journal.com/story/news/local/breonna-taylor/2020/09/23/end-case-went-down-just-experts-criminal-law-predicted-none-three-officers-involved-death-breonna-taylor/5864466002/>; see also Press Conference, *supra* note 12 at 00:15:00-00:15:22.

- 74 Lati, *supra* note 13; see also, Breonna Taylor grand juror claims there was enough evidence for homicide charges, police “covered” their mistakes, CBS News, (Oct. 29, 2020), <https://www.cbsnews.com/news/breonna-taylor-grand-juror-homicide-charges-police-mistakes/>; Zoe Christen Jones, *Third anonymous juror from Breonna Taylor case speaks out to promote “transparency,”* CBS News (Oct. 30, 2020), <https://www.cbsnews.com/news/breonna-taylor-third-anonymous-juror-speaks-out/>; Dylan Lovan, *3rd Breonna Taylor grand juror: Cops ‘got clap on the wrist’*, Associated Press (Nov. 16, 2020), https://apnews.com/article/breonna-taylor-louisville-shootings-005f99347b-202b3add4baca340a54820?utm_campaign=SocialFlow&utm_medium=AP&utm_source=Twitter.
- 75 Kentucky Rev. Stat. § 507.020 (murder in the first degree: intentionally causing the death of another person or a third person; includes wanton murder, i.e. acting “under circumstances manifesting extreme indifference to human life, . . . wantonly engages in conduct which creates a grave risk of death to another person and thereby causes the death of another person.” KRS 507.020(l)(b)).
- 76 Kentucky Rev. Stat. § 507.030 (manslaughter in the first degree: intentionally causing serious physical injury to another person resulting in their death or the death of a third person).
- 77 Kentucky Rev. Stat. § 507.040 (manslaughter in the second degree: “wantonly caus[ing] the death of another person”; being “aware of and consciously disregarding a substantial and unjustifiable risk that the result will occur or that the circumstance exists.” Kentucky Rev. Stat. § 501.020. Where the risk is “of such nature and degree that [disregard thereof] constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.” *Id.*).
- 78 Kentucky Rev. Stat. § 507.050 (reckless homicide: recklessly causing the death of another person by “fail[ing] to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists.” See Kentucky Rev. Stat. § 501.020; see also KRS 501.020(4) (“The risk must be of such a nature and degree that [disregard thereof] constitutes a gross deviation from the standard of care that a reasonable person would [exercise] in the situation.”).
- 79 Grand Jury Audio Recording, Day 2 (BT Sept. 22-1), 00:09:20-00:09:43.
- 80 Grand Jury Audio Recording, Day 1 (BT Sept. 21-4) 01:09:35-01:10:37 (Det. Cosgrove); see *Oxford English Dictionary* definition of “soft target” (“a person or thing that is relatively unprotected or vulnerable, especially to military or terrorist attack”).
- 81 Grand Jury Audio Recording, Day 1 (BT Sept. 21-5), 00:07:42-00:07:58 (Det. Nobles).
- 82 Grand Jury Audio Recording, Day 2 (BT Sept. 22-1), 00:55:19-00:55:33 (Det. Hankison).
- 83 *Id.* at 00:55:36-00:55:46 (Det. Hankison).
- 84 *PIU Investigative Reports, supra* note 54 at 131 (LMPD Officer Interviews: Det. Hankison).
- 85 Grand Jury Audio Recording, Day 1 (BT Sept. 21-5), 00:07:42-00:07:58 (Det. Nobles).
- 86 Grand Jury Audio Recording, Day 2 (BT Sept. 22-1), 00:15:25-00:15:35 (Det. Hankison).
- 87 Public Integrity Unit Investigative Files, Interview Transcript (Det. Campbell) 153, <https://louisville-police.org/DocumentCenter/View/1808/PIU-20-019-Transcripts>.
- 88 Grand Jury Audio Recording, Day 1 (BT Sept. 21-2), 00:37:25-00:37:38.
- 89 *PIU Investigative Reports, supra* note 54 at 157 (SWAT Follow-Up Interviews: Lt. Massey).
- 90 Grand Jury Audio Recording, Day 3 (BT Sept. 23-2), 00:02:47-00:02:57 (Grand juror questions: “Was there a formal plan between the seven officers as they made approach to serving the warrant.” Det. Hall: “I’m not aware of one.”)
- 91 See Public Integrity Unit Investigative Files, Interview Transcripts (Sgt. Mattingly) 54, (Det. Hankison) 83, (Det. Cosgrove) 118, (Det. Nobles) 136, (Det. Campbell) 155-56, (Lt. Hoover) 171-73, (Det. James) 216-17, <https://louisville-police.org/DocumentCenter/View/1808/PIU-20-019-Transcripts>.
- 92 Public Integrity Unit Investigative Files, Interview Transcript (Det. Cosgrove) 110, <https://louisville-police.org/DocumentCenter/View/1808/PIU-20-019-Transcripts>.
- 93 *Id.*
- 94 Grand Jury Audio Recording, Day 2 (BT Sept. 22-3), 00:55:40-00:58:00 (Lt. Massey).
- 95 *PIU Investigative Reports, supra* note 54 at 158 (SWAT Follow-Up Interviews: Lt. Massey).
- 96 *Id.*
- 97 Grand Jury Audio Recording, Day 2 (BT Sept. 22-2R) 00:12:43-00:13:15 (Lt. Hoover).
- 98 Grand Jury Audio Recording, Day 2 (BT Sept. 22-2R) 01:15:58-01:16:23 (Walker).
- 99 *Report of Forensic Laboratory Examination, supra* note 19.
- 100 Grand Jury Audio Recording, Day 2 (BT Sept. 22-3), 00:54:50-00:55:27 (Lt. Massey).
- 101 Grand Jury Audio Recording, Day 1 (BT Sept. 21-4), 00:10:54-00:12:05 (Sgt. Mattingly).
- 102 Grand Jury Audio Recording, Day 2 (BT Sept. 22-3), 00:53:50-00:55:00 (Massey).

103 Detective Cosgrove fired 16 rounds into Ms. Taylor’s apartment, Sergeant Mattingly fired 6 rounds, and former Detective Hankison fired 10 rounds. Grand Jury Audio Recording, Day 1 (BT Sept. 21-1), 00:34:40-00:35:35.

104 *Brett Hankison’s Termination Letter*, *supra* note 29.

105 Grand Jury Audio Recording, Day 2 (BT Sept. 22-3), 01:00:30-01:00:35 (Lt. Massey).

106 Public Integrity Unit Investigative File, Interview Transcript (Det. Cosgrove) 111, <https://louisville-police.org/DocumentCenter/View/1808/PIU-20-019-Transcripts>.

107 *Id.* at 111-12.

108 Public Integrity Unit Investigative File, Interview Transcript (Sgt. Casse) 282, <https://louisville-police.org/DocumentCenter/View/1808/PIU-20-019-Transcripts>.

109 Press Conference, *supra* note 12 at 00:15:00-00:15:22.

110 Marcus Green, *Grand jurors say Cameron’s office was asked if more charges could be considered in Breonna Taylor case*, WDRB (Oct. 28, 2020), https://www.wdrb.com/news/breonna-taylor/grand-jurors-say-camerons-office-was-asked-if-more-charges-could-be-considered-in-breonna/article_dfae75d8-1986-11eb-8ed6-5f0053270c47.html

111 *Id.*

112 *See* Kentucky Rev. Stat. §§ 503.120.

113 *Brett Hankison’s Termination Letter*, *supra* note 29.

114 Kentucky Rev. Stat. § 503.120.

115 Grand Jury Audio Recording, Day 3 (BT Sept. 23-1), 01:13:40-01:14:57.

116 *Id.* at 01:16:15-01:16:30.

117 Ky. RCr 5.02 (emphasis added).

118 Ky. RCr 5.14(1) (“The attorney for the Commonwealth or designated assistant shall also, when requested by [the grand jury], draft indictments.”).

119 Commonwealth of Kentucky’s Mot. to Dismiss and Resp. to Pl.’s Mot. for Release of Grand Jury Transcripts/Recordings/Reports at 2, *Anonymous Grand Juror #1 v. Commonwealth of Kentucky*, No. 20-CI-5721 (Jefferson Circuit Court, filed Oct. 7, 2020) (available at: <https://www.dropbox.com/s/ns134ysqzxfn4wm/2020.10.07%20AG%20-%20Response%20to%20Juror%27s%20Motion%20and%20Mtn%20to%20Dismiss.pdf?dl=0>).

120 Ky. RCr 5.24(1) (“Subject to the right of a person indicted to procure a transcript or recording as provided by Rule 5.16(3), and subject to the authority of the court at any time to direct otherwise, all persons present during any part of the proceedings of a grand jury shall keep its proceedings and the testimony given before it secret, except that counsel may divulge such information as may be necessary in preparing the case for trial or other disposition.”)

121 *See* Ky RCr 5.18 (“No person other than the grand jurors shall be present while the grand jury is deliberating or voting.”)

122 Statement of Grand Juror No. 1, *supra* note 28.

123 Green, *supra* note 110.

124 Marisa Lati, *Breonna Taylor’s mother requests new prosecutor as grand jurors say they were denied evidence*, Washington Post (Oct. 30, 2020), <https://www.washingtonpost.com/nation/2020/10/28/breonna-taylors-mother-requests-new-prosecutor/>.

125 *See, e.g.*, Exec. Order No. 147, 9 CRR-NY 8.147 (2015) (creating an Office of Special Investigation and Prosecution Unit in the New York State Attorney General’s Office), <https://ag.ny.gov/SIPU>; *see also* Wis. Stat. Ann. § 175.47; Amari L. Hammonds et al., *At Arm’s Length: Improving Criminal Investigations of Police Shootings*, Stanford Criminal Justice Center (2016), <https://law.stanford.edu/wp-content/uploads/2016/09/At-Arms-Length-Oct-2016.pdf>.

126 KRS § 67C.103(13).

127 The authority for this appears to rest squarely in Kentucky’s public records law. Kentucky Rev. Stat. §§ 61.870 - 61.884. This statutory framework establishes a right of access to public records, including one for investigative files at issue here.

128 *See e.g.* Tucson Police Department, *Report of the Tucson Sentinel Event Review Board (SERB) on the Deaths in Custody of Mr. Damien Alvarado and Mr. Carlos Adrian Ingram-Lopez* (September 18, 2020), https://www.tucsonaz.gov/files/police/SERB/In_Custody_SERB_Final_Report_Sept_2020.pdf; U.S. Department of Justice, Community Oriented Policing Services, *How to Conduct An After Action Review* (2020), <https://cops.usdoj.gov/RIC/Publications/cops-w0878-pub.pdf>.

