

**IN THE CIRCUIT COURT FOR SEVIER COUNTY
THE FOURTH JUDICIAL DISTRICT
STATE OF TENNESSEE**

***THE GATLINBURG FREE PRESS*; and
ERIK COOPER, in his individual capacity,**

Plaintiffs/Petitioners,

v.

**JAMES BRUCE DUNN, in his official
capacity as DISTRICT ATTORNEY
GENERAL FOR THE FOURTH
JUDICIAL CIRCUIT; SEVIER COUNTY
DISTRICT ATTORNEY GENERAL'S
OFFICE; and SEVIER COUNTY,**

Defendant/Respondent.

No.:

23-CV-415

FILED
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CLERK
SEVIER COUNTY, TN

**COMPLAINT AND PETITION FOR ACCESS TO PUBLIC RECORDS
AND TO OBTAIN JUDICIAL REVIEW OF DENIAL OF ACCESS**

Pursuant to the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-501, *et. seq.* ("TPRA"), Plaintiffs/Petitioners *The Gatlinburg Free Press* and Erik Cooper hereby file their Complaint and Petition before this Court for access to specific public records which are within the custody, possession, or control of James Bruce Dunn ("Mr. Dunn"), in his official capacity as District Attorney General for the Fourth Judicial Circuit of the State of Tennessee, Sevier County District Attorney General's Office ("DAGO"), and Sevier County (the "County"), for judicial review of Mr. Dunn's, the DAGO's, and the County's denial of access to the specified public records, and for attorneys' fees and costs. A Memorandum of Law ("MOL") in support of this Complaint and Petition is being filed contemporaneously. As grounds for this Complaint/Petition, the Plaintiffs/Petitioners respectfully show this Honorable Court as follows:

PARTIES

1. Plaintiff/Petitioner *The Gatlinburg Free Press* (“TGFP”) is a news organization based in Gatlinburg, Tennessee. *TGFP* is a content aggregator gathering and distributing news and information content to local, regional, and national news outlets and related organizations. *TGFP* conducts comprehensive investigations involving various subject matters and events.

2. Plaintiff/Petitioner Erik Cooper (“Mr. Cooper”) is an investigative journalist, a resident of Sevier County, Tennessee, and a citizen of the State of Tennessee. Mr. Cooper is also employed as a risk management and litigation consultant with Acuity Consulting Services. Mr. Cooper is the creator, sole proprietor, and publisher of *TGFP*, and a published writer for *Adoption Today*, *Fostering Families Today*, *The Local Malibu*, and *90210 Magazine*, among others publications, media, and news outlets. Mr. Cooper’s recent investigative journalism examines alleged violations of state and federal laws by Mr. Dunn and various employees of the DAGO involving Sevier County Grand Jury proceedings, and violation of public access to government records by Sevier County.

3. Defendant/Respondent James Bruce Dunn is the elected District Attorney General for the Fourth Judicial Circuit of the State of Tennessee. Mr. Dunn is required to comply with the TPRA, Tenn. Code Ann. §§ 10-7-501, *et. seq.* Service of process upon Mr. Dunn will be made by delivering a copy of the Summons, this Complaint and Petition, and the MOL upon the Attorney General for the State of Tennessee in accordance with Tenn. R. Civ. P. 4.04(6).

4. Defendant/Respondent Sevier County District Attorney General’s Office is governed by Mr. Dunn in his official capacity as the elected District Attorney General for the Fourth Judicial Circuit of the State of Tennessee. The DAGO is required to comply with the TPRA, Tenn. Code Ann. §§ 10-7-501, *et. seq.* Service of process upon the DAGO will

be made by delivering a copy of the Summons, this Complaint and Petition, and the MOL upon the Attorney General for the State of Tennessee in accordance with Tenn. R. Civ. P. 4.04(6).

5. Defendant/Respondent Sevier County is a governmental entity within the State of Tennessee. One of the County's departments is the Records Management department under the leadership of Sevier County Mayor-elect Lawrence "Larry" Waters ("Mr. Waters") and direction of Brad Cannon ("Mr. Cannon"). The County is required to comply with the TPRA, Tenn. Code Ann. §§ 10-7-501, *et. seq.* Service of process upon the County will be made by delivering a copy of the Summons, this Complaint and Petition, and the MOL upon the chief executive officer, the county attorney, or to the county court clerk in accordance with Tenn. R. Civ. P. 4.04(7).

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this Complaint and Petition. Venue is proper in this Court under Tenn. Code Ann. § 10-7-505(b). This Court also has subject matter jurisdiction over this Complaint and Petition pursuant to Tenn. Code Ann. § 1-3-121.

FACTUAL ALLEGATIONS

7. Public oversight of government and its employees, including the District Attorney General and its staff, is necessary in a democracy. Facilitating such oversight is the fundamental purpose of the TPRA. Here, *TGFP* and Mr. Cooper seek public records that would shine a light on how Mr. Dunn, the DAGO, and the County comply with Tennessee laws including, without limitation, Tenn. Code Ann. § 40-12-104, *et. seq.*, when facilitating, directing, managing, participating in, or otherwise involving themselves in Grand Jury proceedings.

Denial of Plaintiffs'/Petitioners' Public Records Request

8. On March 27, 2023, Mr. Dunn and the DAGO denied Mr. Cooper the right to offer testimony and evidence to the Sevier County Grand Jury Panel in accordance with Tenn. Code Ann. § 40-12-104, *et. seq.* On that date, Mr. Newcomb demanded Mr. Cooper execute a Waiver of Constitutional Rights (“Waiver”) before Mr. Newcomb and the DAGO would permit Mr. Cooper to offer any testimony or evidence to the Sevier County Grand Jury Panel as afforded under T.C.A. § 40-12-104, *et. seq.* A true and exact copy of the Waiver demanded of Mr. Cooper for execution by Mr. Newcomb and the DAGO on March 27, 2023 is attached herewith and labeled **Exhibit A**.

9. On March 28, 2023, *TGFP*, through Mr. Cooper, submitted a public records request to Mr. Dunn, the DAGO, the County, and the Tennessee Attorney General (“Request”). The Request was submitted under the TPRA and assigned number GFP-EC-SC-094 by *TGFP*. The Request sought all records in the possession of Mr. Dunn, the DAGO, and the County either pertaining or relating in any manner to any waiver of an individual’s Constitutional or other legal rights. A true and exact copy of the Request is attached herewith and labeled **Exhibit B**.

10. On March 28, 2023, Lauren S. Lamberth (“Ms. Lamberth”), special counsel to the Chief Deputy for the Office of the Tennessee Attorney General, acknowledged receipt of the Request and responded to *TGFP*, advising that the State of Tennessee had no responsive records.

11. On March 31, 2023, *TGFP* responded to Ms. Lamberth and requested the Tennessee Attorney General forward the Request to the appropriate district office or, alternatively, requested contact information for public records requests intended for the DAGO.

12. On April 3, 2023, Ms. Lamberth responded to *TGFP*’s March 31, 2023 request and provided *TGFP* the following link for public records request sought from the DAGO:

<https://www.tndagc.org/district-4/>. The link provided by the Tennessee Attorney General offered no contact information for public records requests intended for the DAGO.

13. In the absence of any publicly-available information directing public records requests submitted to the DAGO, on April 9, 2023, *TGFP* submitted the Request via email to Mr. Dunn, the DAGO, and Mr. Cannon.

14. On April 10, 2023, *TGFP* received email correspondence from Mr. Dunn providing the following communication, in its entirety:

*“Rcnewcomb@tndagc.org
Wbmarsh@tndagc.org”*

15. In response to Mr. Dunn’s puzzling email message containing only the email addresses of two of Mr. Dunn’s subordinates and offering no other content, *TGFP* submitted email correspondence to assistant district attorney Ronald Crockett Newcomb (“Mr. Newcomb”) and deputy district attorney William Brownlow Marsh (“Mr. Marsh”) advising Mr. Newcomb and Mr. Marsh that no publicly-available information offered instruction for submission of any TPRA requests to either Mr. Dunn or the DAGO and, in the absence of such information, *TGFP* submitted its Request to Mr. Dunn via email. However, absent any explanation, Mr. Dunn responded to the Request by offering *TGFP* Mr. Newcomb’s and Mr. Marsh’s email addresses. *TGFP*, by and through its April 10, 2023 submission to Mr. Newcomb and to Mr. Marsh, resubmitted their Request originally submitted on March 28, 2023 and April 9, 2023.

16. On April 12, 2023, *TGFP* received a response from Mr. Marsh (“Response”):

*“[n] response to your request for public documents pursuant to your
FOIA [emphasis added] request email dated April 10, 2023,
the only public document responsive to your request is attached.
All other matters pertaining to Grand Juries not resulting in a
public document are matters of work product and/or
open investigative files which are exempt from FOIA request[s].”*

TGFP remitted the Request to Mr. Dunn and DAGO under the Tennessee Public Records Act, not the Freedom of Information Act (FOIA) as Mr. Marsh indicated in his Response. A true and exact copy of the Response is attached herewith and labeled **Exhibit C**.

17. Mr. Marsh attached to his Response a single document -- the same Waiver Mr. Newcomb and the DAGO demanded for execution by Mr. Cooper on March 27, 2023.

18. On April 25, 2023, *TGFP* submitted a TPRA dispute of the Response provided by Mr. Dunn and the DAGO in Mr. Marsh's April 12, 2023 email ("Dispute"). In the Dispute, *TGFP* cited Mr. Dunn's and the DAGO's violation of Tenn. Code Ann. § 10-7-503(a)(2)(B) governing responses to TPRA requests due within seven (7) business days, Mr. Dunn's and the DAGO's violation of Tenn. Code Ann. § 10-7-503(5) for failure to provide redacted records, and referred Mr. Dunn and the DAGO, by and through Mr. Marsh, to the Open Records Counsel for the Tennessee Office of the Comptroller for additional information and assistance concerning Mr. Dunn's and the DAGO's obligations due under the TPRA as provided for under Tenn. Code Ann. § 8-4-601. A true and exact copy of the Dispute is attached herewith and labeled **Exhibit D**.

19. *TGFP's* April 25, 2023 Dispute also provided Mr. Dunn, Mr. Marsh, and the DAGO with notice of *TGFP's* intent to file a petition for relief should Mr. Dunn or the DAGO fail to respond to the Dispute on or before April 28, 2023.

20. To the knowledge of Mr. Cooper and *TGFP*, neither Mr. Dunn, Mr. Marsh, nor any other employee of the DAGO contacted any representative of the Open Records Counsel for the Tennessee Office of the Comptroller.

21. On April 28, 2023, *TGFP* received a reply from Mr. Marsh for Mr. Dunn and the DAGO ("Reply"), stating:

“Our records are maintained in files and you have not sufficiently identified any file that we might produce pursuant to your request.

Your request also appears to ask our office to do research for you and this we are not required to do. Please see T.C.A. Set 1-7-503 (4) [1.] [w]hich states: ‘This section shall not be construed as requiring a governmental entity to sort through files to compile information or to create or recreate a record that does not exist. Any request for inspection or copying of a public record shall be sufficiently detailed to enable the governmental entity to identify the specific records for inspection and copying.’

You have provided insufficient detail in your request and our office cannot honor it.”

A true and correct copy of Mr. Marsh’s April 28, 2023 Reply is attached herewith and labeled

Exhibit E. The Reply was copied to Stephanie Gray Woods, Mr. Newcomb, and Mr. Dunn.

22. *TGFP* disputes Mr. Marsh’s Reply and finds the Request (Ex. B) provides Mr. Dunn, Mr. Marsh, and the DAGO with sufficient detail and information necessary for Mr. Dunn and the DAGO to produce responsive records requested by *TGFP*.

23. *TGFP* also disputes Mr. Marsh’s Reply and finds the Request (Ex. B) did not request for the DAGO “*to do research for [TGFP]*”, rather, the Request sought records which should be readily available for production upon any public records request submitted to a government agency.

24. Quite randomly, Mr. Marsh supplemented his April 28, 2023 Reply with email correspondence remitted to *TGFP* on July 3, 2023 (“Supplemental Response”), writing therein:

“In response to your notice of dispute, please be advised that our office is relying on Tennessee Code Annotated Section 10-7-503 (4) which provides:

‘4. This section shall not be construed as requiring a governmental entity to sort through files to compile information or to create or recreate a record that does not exist. Any request for inspection or copying of a public record shall be sufficiently detailed to enable the governmental entity to identify the specific records for inspection and copying.’”

Mr. Marsh's July 3, 2023 Supplemental Response was submitted to *TGFP* sixty-six days following Mr. Marsh's April 28, 2023 Reply, and was neither solicited nor requested either by *TGFP* or Mr. Cooper. A true and exact copy of the Supplemental Response is attached herewith and labeled **Exhibit F**.

25. In June 2023, Mr. Cooper met with Mr. Cannon and addressed the County's failure to timely comply with the TPRA governing a number of public records requests submitted to the County from *TGFP*. In response to *TGFP*'s Request remitted to the County on March 28, 2023, Mr. Cannon advised Mr. Cooper that the County had no records in its possession in response to the Request. Mr. Cooper requested for Mr. Cannon to provide *TGFP* the County's response in writing.

26. Upon the filing of this instant Complaint and Petition, *TGFP* has received no written response to the Request from the County.

27. Mr. Dunn has produced insufficient public records in response to the Request.

28. The DAGO has produced insufficient public records in response to the Request.

29. The County has produced no public records in response to the Request.

The County Lacks Public Records Accountability

30. The County neither possesses nor maintains policies, procedures, or guidelines governing administration of requests submitted to the County under the TPRA. In the absence of such policies, procedures, or guidelines, the County routinely fails to comply with the provisions of the TPRA.

31. *TGFP* and Mr. Cooper have remitted numerous public record requests to the County since at least 2018. The County has failed on many occasions to comply with Tenn. Code Ann. § 10-7-503(a)(2)(B) governing responses to TPRA requests due within seven (7)

business days. The County has failed to preserve records requested under the TPRA and known to be maintained by and in possession of the County *before* such records are destroyed, deleted, or otherwise disposed of before the County offers any response to the TPRA request.

32. In the absence of policies, procedures, or guidelines directing the County's response to TPRA requests, County employees cannot and often do not comply with the TPRA.

History Preceding the TPRA Request:
Mr. Cooper Challenges the DAGO's Waiver of Constitutional Rights

33. Mr. Cooper appeared before Sevier County Grand Juries on many occasions since at least 2018 to provide his knowledge and/or proof of public offenses triable or indictable in Sevier County as afforded under T.C.A. § 40-12-104, *et. seq.* During many of these appearances, Mr. Cooper personally witnessed interference and obstruction of justice of Grand Jury proceedings committed by former Grand Jury Foreman Lyle Overbay, Mr. Dunn, Mr. Newcomb, assistant district attorney Barry Arthur Williams ("Mr. Williams"), and employees of the DAGO.

34. Mr. Cooper submitted correspondence in complaint of witnessed misconduct during Sevier County Grand Jury proceedings to various Presiding Judges of the Fourth Judicial Circuit since at least 2018. Mr. Cooper's complaints were not resolved, and the aggrieved misconduct witnessed was repeated during Mr. Cooper's subsequent Grand Jury appearances.

35. Mr. Cooper's civil liberties protected by the Constitutions of the United States of America and the State of Tennessee were violated by Mr. Dunn, Mr. Newcomb, and the DAGO again on March 27, 2023 when Mr. Cooper was prohibited from offering testimony or evidence to the Grand Jury Panel under threat of prosecution by Mr. Newcomb and the DAGO.

36. Mr. Newcomb and DAGO -- *not the Grand Jury Foreman or Grand Jury Panel* -- denied Mr. Cooper's application to testify before the Grand Jury under T.C.A. § 40-12-104 on March 27, 2023.

37. On March 27, 2023, Mr. Cooper again transmitted correspondence to each of the Judges of the Fourth Judicial Circuit providing the Court with notice of obstruction of justice by the DAGO during Grand Jury proceedings conducted March 27, 2023, and requested the Court's intervention and exercise of authority under Rules 6 and 11 of the Tenn. R. of Crim. P. in future Grand Jury hearings.

38. On April 3, 2023, Honorable Judge Rex Henry Ogle, in his capacity as Presiding Judge of the Fourth Judicial District, issued an Order treating Mr. Cooper's March 27, 2023 communication as a Petition for Judicial Interpretation and Relief. The matter was styled *In Re: Sevier County Grand Jury / Erik Cooper, Petitioner to Appear Before the Sevier County Grand Jury*, filed in the Sevier County Circuit Court, and assigned file number 2023-PJ-04-03. The Court ordered Mr. Cooper and the DAGO to appear before the Court on April 24, 2023 for a hearing on Mr. Cooper's petition.

39. On April 20, 2023, Mr. Cooper supplemented his March 27, 2023 correspondence by filing a Petition for Judicial Interpretation and Relief with the Clerk of Court, adopting his March 27, 2023 correspondence to the Court, the Court's April 3, 2023 Order, and stating his prayers for the Court's relief ("Petition").

40. On April 24, 2023, the Court conducted a hearing on the Petition. Mr. Cooper appeared before the Court and argued his Petition *pro se*. Mr. Newcomb, Mr. Dunn, and other staff from the DAGO appeared for the hearing. Mr. Newcomb argued the State's position against Mr. Cooper's Petition.

41. Upon hearing the arguments of the parties made during the April 24, 2023 hearing, the Court granted Mr. Cooper's Petition over the objections of the DAGO.

42. On May 1, 2023 -- a significant day in the instant action -- the Court entered its Order from the April 24, 2023 hearing, finding:

“1. That Mr. Cooper has the right under T.C.A. § 40-12-104 et. seq. to appear in front of the Grand Jury Foreman and two Grand Jurors of Mr. Cooper’s choice without the interference of any person whatsoever.

2. That Mr. Cooper is not required to sign a Waiver of Immunity in order to appear before the Grand Jury Foreman and two Grand Jurors of Mr. Cooper’s choice.

3. That Mr. Cooper advised the Court that he intends to appear before the Grand Jury Foreman and two Grand Jurors on May 1, 2023.

***Absent interference of Mr. Cooper’s right to testify pursuant to T.C.A. § 40-12-104 et. seq., the Court will not interfere further** [emphasis added]. A copy of the official transcript of the hearing conducted on April 24, 2023 as filed in the Sevier County Circuit Court on April 28, 2023 at 3:42 p.m. is hereby attached and incorporated by reference.*

4. As the Presiding Judge of the Fourth Judicial District, the Court herein advises all parties that it is available this date for any hearings that should be necessary and allowable by law.”

A true and exact copy of the Court’s Order entered May 1, 2023 for the hearing conducted on April 24, 2023 for Mr. Cooper’s Petition is attached herewith and labeled **Exhibit G**.

43. In issuing its Order, the Court affirmed Mr. Cooper’s rights provided for under T.C.A. § 40-12-104 and violated by Mr. Newcomb and the DAGO on March 27, 2023.

**Mr. Cooper Witnessed Criminal Violations of State and Federal Laws
During Grand Jury Proceedings by Mr. Dunn, Mr. Newcomb, Mr. Williams,
and Employees of the Sevier County District Attorney General's Office**

**Mr. Dunn's Control and Administration
of an Individual's Rights Afforded Under T.C.A. § 40-12-104**

44. The DAGO unilaterally controls the process and appearance of any individual requesting to meet with the Grand Jury Foreman as provided for under T.C.A. § 40-12-104.

Mr. Dunn, as the publicly elected official overseeing the DAGO:

- (a) requires an individual submit an application¹ to request *permission* to appear before the Grand Jury Panel in violation of T.C.A. § 40-12-104;
- (b) requires an individual submit the Application to the Clerk of Court before a deadline the DAGO directs and not afforded under T.C.A. § 40-12-104;
- (c) requires the individual to produce for copying and retention by the DAGO valid government-issued photographic identification;
- (d) schedules the individual's appearance before the Grand Jury Foreman;
- (e) receives, controls, and distributes the individual's Application to the DAGO staff and Grand Jury Foreman *before* the individual's appearance the DAGO scheduled in violation of T.C.A. § 40-12-104;
- (f) conducts an investigation of the limited information offered within the Application including, without limitation, interviewing witnesses, obtaining and reviewing evidence, and drawing investigative conclusions of alleged criminal offenses *before* the individual's scheduled appearance before the Grand Jury Foreman in violation of T.C.A. § 40-12-104; and

¹ The application utilized by the DAGO in Sevier County since at least 2018 is titled "Summary Form Application to Testify Before the Grand Jury: T.C.A. 40-12-104" ("Application").

- (f) retains or disposes the Application, at the sole discretion of the DAGO, without filing any copy of the Application with the Clerk of Court.

45. The DAGO unilaterally controls administration of an individual's rights afforded under T.C.A. § 40-12-104 by directing the Clerk of Court to distribute and receive Applications of any individual requesting to appear before the Grand Jury Foreman or the Grand Jury Panel.

46. The DAGO limits an individual's rights afforded under T.C.A. § 40-12-10, while equally violating T.C.A. § 40-12-104, by imposing a deadline for submission of an Application to appear before the Grand Jury Foreman. T.C.A. § 40-12-104 limits neither the date nor time when an individual may request to appear before a Grand Jury Foreman, whether a Grand Jury is convened or not.

47. The DAGO controls the retention of all Applications and prohibits the County's production, in response to a TPRA request, of any Application by prohibiting the Clerk of Court from retaining any copy of the Application the Clerk of Court receives as directed by Mr. Dunn.

Mr. Dunn's Selection and Control of the Grand Jury Foreman

48. Mr. Dunn unilaterally selects an individual for appointment to serve a two-year term as Grand Jury Foreman. No public notice is given for the position of Grand Jury Foreman, and no application process exists for a Sevier County citizen to apply or to serve in the position.

49. Mr. Dunn's selected candidate is appointed by an order of the Court as required under Tenn. R. Crim. P. Rule 6(g)(1). The Court administers an oath to the Grand Jury Foreman. The Grand Jury Foreman is currently paid \$15.00 per day for each day of service provided.

50. In Sevier County, the Grand Jury Foreman collaborates closely with Mr. Dunn and the DAGO. The Grand Jury Foreman does not perform his duties independently from Mr. Dunn or DAGO employees, but rather, conducts Grand Jury proceedings as an extension of

Mr. Dunn and the DAGO to serve Mr. Dunn's and the DAGO's own agendas.

51. The Grand Jury Foreman does not require an applicant submit an Application to appear before the Grand Jury Foreman as provided under T.C.A. § 40-12-104. Mr. Dunn does.

52. The Grand Jury Foreman does not schedule an individual's appearance before the Grand Jury Foreman as provided under T.C.A. § 40-12-104. Mr. Dunn does.

53. The Grand Jury Foreman does not retain a copy of the Application required before an individual is permitted to appear before the Grand Jury Foreman. Mr. Dunn does.

Mr. Dunn's Collaboration with the Grand Jury Foreman during Grand Jury Proceedings

54. The duties of a District Attorney General participating in Grand Jury proceedings is defined under Tenn. R. Crim. P. Rule 6(h).

55. Rule 6(h)(1) provides:

*“(1) Attendance. When **required** [emphasis added] by the grand jury, the district attorney general **may** [emphasis added] appear before the grand jury **for the purpose of giving legal advice** [emphasis added], but shall not be present -- nor shall any other officer or person other than the grand jurors be present -- when the grand jurors vote on an indictment or presentment.”*

Clearly, the Tennessee legislature did not desire for Grand Jurors to be influenced by the district attorney general, or “any other officer or person”, “when the grand jurors vote on an indictment or presentment.” In Sevier County, however, Mr. Dunn's influence upon Grand Jurors permeates through other measures. By Rule 6(h)(1), Mr. Dunn or his assistants' appearances before a Grand Jury may only occur when “required” by the Grand Jury. However, examination of Grand Jury *requests* for the district attorney general's appearance during Grand Jury proceedings offers evidence of improprieties for many years.² Only one other Rule -- Rule 6(h)(2) -- provides for the district attorney general's involvement in Grand Jury proceedings, and limits that involvement to preparation of indictments.

56. T.C.A. § 40-12-104(c) supplements Rule 6(h)(1) with the following:

*“The [Grand Jury] panel **may** [emphasis added] consult the district attorney general **or the court** [emphasis added] for guidance in making its determination.”*

57. During Sevier County Grand Jury proceedings Mr. Cooper has witnessed, Mr. Dunn and employees of the DAGO have interfered with and obstructed justice of Grand Jury proceedings by, among other things:

- (a) directing Grand Jury proceedings by instructing the applicant where to sit;
- (b) swearing the applicant with an oath given under penalty of perjury;
- (c) threatening the applicant with prosecution for offering any testimony or evidence given to a Grand Jury Panel or Grand Jury;
- (d) questioning the applicant and witnesses appearing before the Grand Jury without the request of the Grand Jury or its Panel;
- (e) offering the Grand Jury the results of the DAGO’s investigation conducted upon information contained in the Application;
- (f) interrupting testimony offered the Grand Jury by the applicant; and
- (g) denying the applicant’s request to appear before the Grand Jury Foreman.

58. In this collaboration between Mr. Dunn, the DAGO, and the Grand Jury Foreman, Mr. Cooper has personally witnessed interference and corruption of Grand Jury proceedings by and through official misconduct³, witness tampering⁴, and civil liberty violations⁵ committed by Mr. Dunn, Mr. Newcomb, Mr. Williams, and other employees of the DAGO.

2 Examination of Grand Jury records maintained by the Sevier County Circuit Court Clerk revealed “Request” pleadings signed by the Grand Jury Foreman and filed with the Clerk of Court requesting the presence and assistance of the district attorney general or his assistant during Grand Jury proceedings were filed *before* the Grand Jury was empaneled to conduct proceedings. Such pleadings indicate the Grand Jury did *not* request the presence or assistance of the district attorney general during Grand Jury proceedings, rather, the Grand Jury Foreman alone, absent any authority for making such request and absent any vote among Grand Jurors requesting such participation, filed false “Request” pleadings.

59. In 2017, as a litigation consultant and journalist, Mr. Cooper discovered evidence of criminal violations committed by Sevier County and City of Gatlinburg officials⁶ in matters related to the November 28, 2016 catastrophic wildfire. Mr. Cooper reported his discoveries and provided evidence of these violations to Mr. Dunn and the DAGO. Mr. Dunn, as chief criminal prosecutor for Sevier County, failed to act upon the information he received from Mr. Cooper.

60. In 2017, Mr. Cooper and a Tennessee resident appeared before the Grand Jury Panel to provide testimony and evidence of triable offenses committed in Sevier County and involving former Sevier County Commissioner Mary Dumas-Davis. Mr. Cooper witnessed Mr. Dunn and employees of the DAGO interfere and obstruct Grand Jury Panel proceedings.

61. In 2018, Mr. Cooper witnessed former Grand Jury Foreman Lyle Overbay (“Mr. Overbay”) assault and forcibly deprive an individual of her personal property while she visited the Sevier County Courthouse. Mr. Cooper was summoned by the victim to appear before and offer testimony to the Grand Jury Panel on her application seeking indictment of Mr. Overbay. Mr. Cooper witnessed Mr. Dunn and the DAGO again interfere with Grand Jury proceedings and obstruct justice^{3,4,5} by prohibiting the victim from calling upon Mr. Cooper to offer the Grand Jury his testimony. On that date, Mr. Dunn violated T.C.A. § 40-12-104 *et. seq.* to protect Mr. Overbay from criminal indictment and removal as Grand Jury Foreman.

3 In violation of Tenn. Code Ann. § 39-16-402.

4 In violation of Tenn. Code Ann. § 39-16-507(a)(2).

5 In violation of Tenn. Code Ann. § 40-12-104 *et. seq.*

6 In 2017, Mr. Cooper obtained evidence of criminally negligent homicide (Tenn. Code Ann. § 39-13-212) committed by Gatlinburg city manager Cindy Cameron Ogle, Gatlinburg police chief Randy Brackins, Gatlinburg assistant police chief Gary Waldroup, former Gatlinburg fire chief Greg Miller, and former Sevier County emergency management director John Matthews for their individual failures to act, in their official capacities, when given timely notice of impending catastrophic danger affecting citizens and visitors of Sevier County before the devastating wildfire ravaged the community, resulting in the deaths of at least fourteen individuals.

62. In 2018, Mr. Cooper witnessed Mr. Dunn deny an applicant requesting to appear before the Grand Jury Foreman because, as Mr. Dunn falsely advised the victim, T.C.A. § 40-12-104 did not permit an applicant to appear twice before a Grand Jury upon the same Application. Mr. Dunn violated Tennessee statutes^{3,4,5} and prohibited the victim from appearing before the Grand Jury Foreman on that date.

63. In 2018, Mr. Dunn obstructed the testimony of Mr. Cooper's witness summoned to appear before and offer testimony to a Grand Jury Panel. Mr. Dunn, without any authority, required Mr. Cooper's witness submit an affidavit before permitting the witness' testimony.

64. Violations of Tennessee statutes by Mr. Dunn and employees of the DAGO^{3,4,5} affected the indictments of various individuals for various offenses triable or indictable within Sevier County, and caused the statute of limitations for such criminal offenses to toll.

65. Mr. Cooper reported concerns for interference of Grand Jury proceedings, obstruction of justice, and corruption committed by Mr. Dunn, Mr. Newcomb, Mr. Williams, and other employees of the DAGO to the U.S. Department of Justice, the United States Attorney General's Office, the Federal Bureau of Investigations, the Tennessee Bureau of Investigations, and Tennessee Board of Professional Responsibility, making Mr. Cooper a target of Mr. Dunn's and his colleagues' own vendettas.

Mr. Dunn's Imposition of a Waiver of Constitutional Rights in Violation of T.C.A. § 40-12-104

66. Mr. Dunn has required individuals requesting to appear before the Grand Jury Foreman, as provided under T.C.A. § 40-12-104, to execute a Waiver of Constitutional Rights.

67. For cause, Plaintiffs/Petitioners believe that Mr. Dunn and the DAGO prohibited individuals, like Mr. Cooper, from appearing before the Grand Jury Foreman as provided for under T.C.A. § 40-12-104 *et. seq.* until the applicant signed Mr. Dunn's Waiver.

68. On March 27, 2023, upon Mr. Cooper's appearance before the Grand Jury Panel, Mr. Newcomb and the DAGO prohibited Mr. Cooper from offering testimony or evidence to the Grand Jury Panel *until* Mr. Cooper agreed to sign Mr. Dunn's Waiver.

**The State's Retaliation Against Mr. Cooper
for Demanding the DAGO's Public Records and Accountability**

69. Mr. Newcomb and the DAGO violated T.C.A. § 39-16-402 on March 27, 2023 when Mr. Newcomb, in his official capacity as an employee of the DAGO, demanded that Mr. Cooper execute the Waiver under threat of criminal prosecution and duress.

70. Mr. Newcomb and the DAGO violated T.C.A. § 39-16-507(a)(2) on March 27, 2023 when Mr. Newcomb, in his official capacity as an employee of the DAGO, attempted to influence Mr. Cooper to withhold truthful testimony and information from the Grand Jury.

71. Mr. Dunn and the DAGO violated T.C.A. § 40-12-104 on May 1, 2023 when Mr. Dunn, in his official capacity as District Attorney General, interfered with and obstructed the Grand Jury Panel's proceedings and Mr. Cooper's rights afforded under T.C.A. § 40-12-104 *et. seq.* to offer testimony and evidence to the Grand Jury Panel of the commission of triable offenses committed by Mr. Newcomb on March 27, 2023 and indictable in Sevier County.

72. Mr. Cooper filed an Application with the Clerk of Court on or about April 6, 2023 accusing Mr. Newcomb of committing official misconduct in violation of Tenn. Code Ann. § 39-16-402 on March 27, 2023. This was Mr. Cooper's first of three Applications.

73. Mr. Cooper filed an Application with the Clerk of Court on or about April 6, 2023 accusing Mr. Newcomb of violating Tenn. Code Ann. § 40-12-104 on March 27, 2023. This was Mr. Cooper's second of three Applications.

74. Mr. Cooper filed an Application with the Clerk of Court on or about April 10, 2023 accusing Mr. Newcomb of witness tampering in violation of Tenn. Code Ann. § 40-12-507 (a)(2) on March 27, 2023. This was Mr. Cooper's third of three Applications.

75. Mr. Cooper's three Applications submitted to the Clerk of Court on April 6, 2023 and April 10, 2023, respectively, were remitted by the Clerk of Court to the DAGO as directed by Mr. Dunn.

76. Mr. Cooper's three Applications accusing Mr. Newcomb of criminal violations committed during Grand Jury proceedings on March 27, 2023 were shared with Mr. Newcomb by Mr. Dunn and the DAGO.

77. Mr. Dunn and the DAGO scheduled the date and the time of Mr. Cooper's appearance before the Grand Jury Foreman on May 1, 2023.

78. After the Court cleared Mr. Cooper's pathway to justice by entering its Order on May 1, 2023 (Ex. G), Mr. Dunn personally sabotaged Mr. Cooper's testimony and evidence offered to the Grand Jury Panel by presenting to the Grand Jury criminal accusations accusing Mr. Cooper of criminal violations *before* Mr. Cooper appeared *before the same Grand Jurors*. In doing so, Mr. Dunn and the DAGO *poisoned the pond* of Grand Jurors on May 1, 2023.

79. Mr. Dunn pursued criminal indictments against Mr. Cooper on May 1, 2023 *before* Mr. Cooper could provide the same Grand Jurors any testimony or evidence of triable offenses committed on March 27, 2023 by Mr. Dunn's subordinate, Mr. Newcomb.

80. As he did in 2018 when protecting Mr. Overbay (*see*, para. 61), on May 1, 2023, Mr. Dunn again interfered with Grand Jury proceedings and obstructed justice^{3,4,5} to protect Mr. Newcomb from criminal indictment by a Sevier County Grand Jury.

81. Mr. Dunn arranged for Mr. Cooper's *capias* arrest *after* Mr. Cooper had been indicted just hours earlier by the same Grand Jury that Mr. Cooper intended to testify before on May 1, 2023.

82. Mr. Dunn and the DAGO, by and through their actions, *poisoned the pond* of Grand Jurors by seeking an indictment accusing Mr. Cooper of criminal violations just prior to Mr. Cooper's appearance -- as scheduled by Mr. Dunn -- to offer testimony and evidence of Mr. Newcomb's criminal violations on March 27, 2023 *to the same Grand Jurors*.

Records Requested for Production by Mr. Dunn, the DAGO, and the County

83. Records requested for production by *TGFP* and Mr. Cooper from Mr. Dunn, the DAGO, and the County include all Waivers or similar records demanded by Mr. Dunn or any employee of the DAGO for the period beginning March 26, 2013 and ending March 27, 2023.

84. The Court determined the Waiver demanded by Mr. Dunn, Mr. Newcomb and the DAGO for execution by Mr. Cooper, as an applicant requesting to appear before the Sevier County Grand Jury Foreman on March 27, 2023, violated Mr. Cooper's legal rights afforded to him under T.C.A. § 40-12-104 *et. seq.* (*See, Ex. F*).

85. The County advised Mr. Cooper and *TGFP* that the County maintains no Waiver or similar document(s) in the County's possession.

86. Mr. Dunn and the DAGO produced only Mr. Cooper's Waiver (Ex. A) with their Response. Mr. Cooper's Waiver had already been provided to Mr. Dunn and the DAGO in the submitted Request as an example of the records sought. Neither Mr. Dunn nor the DAGO produced any other Waiver or similar records in either the Response or Supplemental Response. Instead, in violation of T.C.A. §§ 10-7-501, *et. seq.*, Mr. Dunn and the DAGO have refused to produce the responsive records requested.

87. In support of their denial, Mr. Dunn and the DAGO alleged:

- (a) “[Plaintiffs/Petitioners] have not sufficiently identified any file that [the DAGO] might produce pursuant to [the] request.”;
- (b) “[The] [R]equest also appears to ask [the DAGO] to do research for [the Petitioners/Plaintiffs] and this [the DAGO is] not required to do.”; and
- (c) “[Plaintiffs/Petitioners] have provided insufficient detail in [their] [R]equest and [the DAGO] cannot honor it.”

The Plaintiffs/Petitioners respectfully disagree. The Plaintiffs/Petitioners show that the Request (Ex. B) provides Mr. Dunn and the DAGO with sufficient information warranting production of the records sought, and neither of the Plaintiffs/Petitioners asked either Defendant/Respondent to conduct research to produce the records. The Request was submitted in accordance with the TPRA and all applicable statutes governing TPRA requests.

88. Plaintiffs/Petitioners allege that Defendants/Respondents have violated and continue to violate T.C.A. §§ 10-7-501, *et. seq.*

CLAIMS FOR RELIEF

89. Plaintiffs/Petitioners incorporate the allegations in paragraphs 1 through 88.

90. Pursuant to the TPRA, Plaintiffs/Petitioners request all Waivers and similar records maintained by or otherwise in the possession of Mr. Dunn, the DAGO, or the County.

91. The Waivers are “public records” within the meaning of Tenn. Code Ann. § 10-7-503(a)(1).

92. Mr. Dunn, the DAGO, and County denied Plaintiffs’/Petitioners’ public records requests for the Waivers.

93. No exemption applies to bar disclosure of the Waivers by Mr. Dunn, the DAGO, or the County.

94. As set forth above, Plaintiffs'/Petitioners' attempts to obtain these public records without filing a petition with this Court have been unsuccessful. It is therefore necessary to bring this action for access and judicial review pursuant to Tenn. Code Ann. § 10-7-505.

95. The County offered no written basis for denial of the public records request.

96. The written basis proffered by Mr. Dunn and the DAGO for denying Plaintiffs'/Petitioners' public records requests for the Waivers do not justify the denials.

97. Plaintiffs/Petitioners are entitled access to public records requested under the TPRA.

98. Tenn. Code Ann. § 10-7-505(g) provides that this Honorable Court may award "all reasonable costs involved in obtaining the records, including reasonable attorneys' fees" if the government "knew the record was public and willfully refused to disclose it."

99. Mr. Dunn and the DAGO knew that the Waivers requested by the Petitioners/Plaintiffs were public and willfully refused to disclose them.

100. Therefore, Petitioners/Plaintiffs are entitled to full access to these public records, as well as an award of all costs, including reasonable attorneys' fees.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs/Petitioners pray that this Honorable Court will:

(A) immediately issue an order, pursuant to Tenn. Code Ann. § 10-7-505(b), requiring Mr. Dunn and representatives of the DAGO and the County to appear before this Court and show cause why this Petition should not be granted and that Defendants/Respondents be enjoined from refusing to promptly produce documents responsive to the Plaintiffs'/Petitioners' Request;

(B) order Mr. Dunn, the DAGO, and the County to provide copies of the public records sought in this Petition to the Court for an *in camera* review at least ten (10) business days in advance of the show cause hearing;

(C) set a date at least ten (10) business days prior to the date of the show cause hearing for Defendants/Respondents to file any brief;

(D) grant the Plaintiffs/Petitioners declaratory judgment that the Waivers requested are public records under Tennessee Law for which no exemption applies and that Mr. Dunn's, the DAGO's, and the County's failure to grant the Plaintiffs/Petitioners access to these public records constitutes a violation of the Tennessee Public Records Act;

(E) grant the Plaintiffs/Petitioners declaratory judgment that Mr. Dunn, the DAGO, and the County knew the Waivers requested were public records for which no exemption applied and willfully refused to grant the Plaintiffs/Petitioners access to the Waivers and similar records;

(F) grant the Plaintiffs/Petitioners declaratory judgment that denial of the Plaintiffs'/Petitioners' TPRA request constitutes a violation of the Plaintiffs'/Petitioners' rights under the First Amendment to the United States Constitution, Article I, and Sections 19 and 23 of the Tennessee Constitution to the right to free speech (including newsgathering and publication) and Plaintiffs'/Petitioners' rights to petition government in violation of the Tennessee Public Participation Act ("TPPA");

(G) grant the Plaintiffs/Petitioners' declaratory judgment that Mr. Dunn, the DAGO, and the County are estopped and/or otherwise barred from asserting purported exceptions/exemptions to the TPRA other than those asserted in their initial denial(s) of the TPRA request;

(H) deny any and all motions to intervene;

(I) grant the Plaintiffs/Petitioners reservation of all claims, rights, and/or damages under the Tennessee Public Records Act and the Tennessee Public Participation Act;

(J) order Mr. Dunn, the DAGO, and the County to immediately make available to the Plaintiffs/Petitioners copies of all Waivers or similar records requested;

(K) grant the Plaintiffs/Petitioners an award of reasonable costs and attorneys' fees pursuant to Tenn. Code Ann. § 10-7-505(g);

(L) grant Plaintiffs/Petitioners discretionary costs under Tenn. R. Civ. P. 54; and

(M) grant Plaintiffs/Petitioners all such further relief to which they may be entitled.

Respectfully submitted on this 12th day of July, 2023, by



ERIK COOPER,
The Gatlinburg Free Press and Erik Cooper,
Plaintiffs/Petitioners

Prepared by:



ERIK COOPER
Plaintiff/Petitioner, *In Propria Persona*
The Gatlinburg Free Press
Post Office Box 1413
Gatlinburg, Tennessee 37738
Tel: (865) 438-0892
CooperErik@aol.com
GatlinburgFreePress@Gmail.com

The Gatlinburg Free Press, et. al. v. James Bruce Dunn, et. al.
Sevier County Circuit Court for the Fourth Judicial District
Case Number: (pending)

EXHIBIT A

Waiver of Constitutional Rights Imposed Upon Applicants
by Mr. Dunn and the Sevier County District Attorney General's Office

("Waiver")

IN THE CIRCUIT COURT FOR Sevier COUNTY, TENNESSEE

IN RE: GRAND JURY - March 27, 2023

WAIVER

I, Erik Cooper, wish to testify before the Grand Jury

relative to their investigation of alleged incident on August 5, 2022

concerning Sevier County Grand Jury Application submitted
March 7, 2023 and any related matter.

in which I may be involved. I have been fully advised of my Constitutional Rights, including

my Right to remain silent and not incriminate myself by personal

testimony or any other means. I have been further advised and

understand that I will receive no immunity for giving such testimony and that my testimony

could possibly be used against me in a Court of Law. I have not been subpoenaed or in any way

compelled to testify but do so voluntarily and of my own free will. I fully understand that the

Grand Jury could return a True Bill against me for any violation

of the criminal laws of the state of Tennessee, or

other related crime(s), after its investigation is finished.

I hereby waive my Constitutional Right to remain silent and further waive any
immunity I might otherwise receive by testifying before the Grand Jury.

This the 27 day of March, 20 23.

Witness: _____

The Gatlinburg Free Press, et. al. v. James Bruce Dunn, et. al.
Sevier County Circuit Court for the Fourth Judicial District
Case Number: (pending)

EXHIBIT B

Tennessee Public Records Request No. GFP-EC-TSA-094
Submitted by *The Gatlinburg Free Press* and Erik Cooper

(“Request”)



Tennessee Public Records Request No. GFP-EC-TSA-094

1 message

Gatlinburg Free Press <gatlinburgfreepress@gmail.com>

Tue, Mar 28, 2023 at 12:10 PM

To: "Herbert H., AG Slatery III" <TNAttyGen@ag.tn.gov>

Bcc: CooperErik <coopererik@aol.com>

Re: **Tennessee Public Records Request No.: GFP-EC-TSA-094**

Dear Records Custodian for the Office of the Attorney General for the State of Tennessee:

Greetings.

This communication shall serve as a public records request under the Tennessee Public Records Act and in accordance with the Public Records Policy for the Office of the Tennessee Attorney General.

The Gatlinburg Free Press has assigned the captioned request number to this matter as indicated above. Please utilize the captioned number when responding to this request.

The Gatlinburg Free Press seeks the following records from The Office of the Tennessee Attorney General:

- (1) All documents, records, materials and things including, without limitation, all forms, documents and/or records in possession of the Office of the District Attorney General for the Fourth Judicial Circuit for the State of Tennessee pertaining or relating in any manner or form to any waiver of Constitutional or Constitutionally-protected rights, whether civil in nature or otherwise, substantially substantively similar to or resembling in any manner or form the sample "Waiver" form submitted herewith. For the purposes of this portion of the request, the time period shall be for a period of ten (10) years beginning on or about March 26, 2013 and ending on or about March 27, 2023;
- (2) All documents, records, materials and things including, without limitation, all forms, documents and/or records in possession of the Office of the District Attorney General for the Fourth Judicial Circuit for the State of Tennessee pertaining or relating in any manner or form to any requirement of either the

Sevier County Circuit Court and/or the Sevier County District Attorney General's Office for acknowledgment or waiver of any legal rights of an applicant and/or an affiant requesting to testify before a Sevier County Grand Jury under T.C.A. section 40-12-104. For the purposes of this portion of the request, the time period shall be for a period of ten (10) years beginning on or about March 26, 2013 and ending on or about March 27, 2023;

(3) All documents, records, materials and things including, without limitation, all forms, documents and/or records in possession of any Office of the District Attorney General in the State of Tennessee pertaining or relating in any manner or form to any waiver of Constitutional or Constitutionally-protected rights, whether civil in nature or otherwise, substantially substantively similar to or resembling in any manner or form the sample "Waiver" form submitted herewith. For the purposes of this portion of the request, the time period shall be for a period of five (5) years beginning on or about March 26, 2018 and ending on or about March 27, 2023; and

(4) All documents, records, materials and things including, without limitation, all forms, documents and/or records in possession of any Office of the District Attorney General in the State of Tennessee pertaining or relating in any manner or form to any requirement of either the Sevier County Circuit Court and/or the Sevier County District Attorney General's Office for acknowledgment or waiver of any legal rights of an applicant and/or an affiant requesting to testify before a Grand Jury under T.C.A. section 40-12-104. For the purposes of this portion of the request, the time period shall be for a period of five (5) years beginning on or about March 26, 2018 and ending on or about March 27, 2023.

Please submit any questions or inquiries concerning this request via email to: GatlinburgFreePress@Gmail.com.

Please advise of any cost greater than \$20.00 for production of any records responsive to this request.

Thank you for your timely attention and assistance with this matter.

Erik Cooper
The Gatlinburg Free Press

1216 East Parkway, #1413
Gatlinburg, Tennessee 37738

GatlinburgFreePress@Gmail.com



The Gatlinburg Free Press, et. al. v. James Bruce Dunn, et. al.
Sevier County Circuit Court for the Fourth Judicial District
Case Number: (pending)

EXHIBIT C

Response from Mr. Dunn and the Sevier County District Attorney General's Office
to the Petitioners'/Plaintiffs' Public Records Request for the Waiver and Similar Documents

("Response")



Gatlinburg Free Press <gatlinburgfreepress@gmail.com>

FOIA Request 4/10/23

3 messages

William B. Marsh <wbmarsh@tndagc.org>

Wed, Apr 12, 2023 at 10:12 AM

To: "GatlinburgFreePress@gmail.com" <GatlinburgFreePress@gmail.com>

Cc: "Jimmy B. Dunn" <jbdunn@tndagc.org>, "Ronald C. Newcomb" <rcnewcomb@tndagc.org>, "Stephanie N. Woods" <snwoods@tndagc.org>

Mr. Cooper;

I response to your request for public documents pursuant to your FOIA request email dated April 10, 2023, the only public document responsive to your request is attached. All other matters pertaining to Grand Juries not resulting in a public document are matters of work product and/or open investigative files which are exempt from FOIA request.

W. Brownlow Marsh



Deputy District Attorney

355 East Broadway

Newport, Tennessee 37821

Office: 423.623.1285

Fax: 423.623.2012

Email: wbmarsh@tndagc.org

LEGAL CONFIDENTIAL: The information in this e-mail and in any attachment may contain information that is privileged either legally or otherwise. It is intended only for the attention and use of the named recipient. If you are not the intended recipient, you are not authorized to retain, disclose, copy or distribute the message and/or any of its attachments. If you received this e-mail in error, please notify me and delete this message.



Waiver.jpg
977K

The Gatlinburg Free Press, et. al. v. James Bruce Dunn, et. al.
Sevier County Circuit Court for the Fourth Judicial District
Case Number: (pending)

EXHIBIT D

Petitioners'/Plaintiffs' Dispute of Mr. Dunn's and the DAGO's Response
to Petitioners'/Plaintiffs' Public Records Request for the Waiver and Similar Documents

("Dispute")

From: gatlinburgfreepress@gmail.com,

To: coopererik@aol.com,

Subject: Re: Tennessee Public Records Request No. GFP-EC-TSA-094 - Dispute of Response to Public Records Request

Date: Sat, Jun 3, 2023 7:53 pm

On Tue, Apr 25, 2023 at 3:02PM Gatlinburg Free Press <gatlinburgfreepress@gmail.com> wrote:

Re: Tennessee Public Records Request No.: GFP-EC-TSA-094 / Dispute of Response to Public Record Request

Dear Mr. Marsh and/or Records Custodian for the Office of the District Attorney General for the Fourth Judicial Circuit:

Greetings.

I am in receipt of, and am writing in response to, your April 12th response to the captioned public records request.

In your April 12th response provided for and on behalf of the Office of the District Attorney General, you wrote, "[T]he only public document available is attached. All other matters pertaining to Grand Juries not resulting in a public document are matters of work product and/or open investigative files which are exempt from FOIA request[s]." Your response is attached herewith.

Your response is respectfully disputed.

The captioned request submitted to you in accordance with the Tennessee Public Records Act ("TPRA") sought the following records:

(1) All documents, records, materials and things including, without limitation, all forms, documents and/or records in possession of the Office of the District Attorney General for the Fourth Judicial Circuit for the State of Tennessee pertaining or relating in any manner or form to any waiver of Constitutional or Constitutionally-protected rights, whether civil in nature or otherwise, substantially substantively similar to or resembling in any manner or form the sample "Waiver" form submitted herewith. For the purposes of this portion of the request, the time period shall be for a period of ten (10) years beginning on or about March 26, 2013 and ending on or about March 27, 2023;

(2) All documents, records, materials and things including, without limitation, all forms, documents and/or records in possession of the Office of the District Attorney General for the Fourth Judicial Circuit for the State of Tennessee pertaining or relating in any manner or form to any requirement of either the Sevier County Circuit Court and/or the Sevier County District Attorney General's Office for acknowledgment or waiver of any legal rights of an applicant and/or an affiant requesting to testify before a Sevier County Grand Jury under T.C.A. section 40-12-104. For the purposes

of this portion of the request, the time period shall be for a period of ten (10) years beginning on or about March 26, 2013 and ending on or about March 27, 2023;

(3) All documents, records, materials and things including, without limitation, all forms, documents and/or records in possession of any Office of the District Attorney General in the State of Tennessee pertaining or relating in any manner or form to any waiver of Constitutional or Constitutionally-protected rights, whether civil in nature or otherwise, substantially substantively similar to or resembling in any manner or form the sample "Waiver" form submitted herewith. For the purposes of this portion of the request, the time period shall be for a period of five (5) years beginning on or about March 26, 2018 and ending on or about March 27, 2023; and

(4) All documents, records, materials and things including, without limitation, all forms, documents and/or records in possession of any Office of the District Attorney General in the State of Tennessee pertaining or relating in any manner or form to any requirement of either the Sevier County Circuit Court and/or the Sevier County District Attorney General's Office for acknowledgment or waiver of any legal rights of an applicant and/or an affiant requesting to testify before a Grand Jury under T.C.A. section 40-12-104. For the purposes of this portion of the request, the time period shall be for a period of five (5) years beginning on or about March 26, 2018 and ending on or about March 27, 2023.

A true and exact copy of the original TPRA request transmitted to your Office on March 28, 2023 is also attached herewith.

Your response in accordance with TPRA is substantially overdue. A response was due within seven (7) business days. *See, e.g.,* T.C.A. 10-7-503(a)(2)(B).

Responsive records include, without limitation, redacted records. *See, e.g.,* T.C.A. 10-7-503(5).

Please cite your authority, if any, substantiating cause for your Office's failure to produce responsive records in accordance with the TPRA request you received. There are currently 563 exemptions available for your review: <https://comptroller.tn.gov/office-functions/open-records-counsel/open-meetings/exceptions-to-the-tennessee-public-records-act.html>

Shall your response not be received on or before April 28, 2023, we will understand you do not intend to respond and, thereafter, shall file a petition for relief accordingly and include therewith a copy of this communication.

You may wish to consult with the Open Records Counsel for the Tennessee Office of the Comptroller at (615) 741-2775 or Open.Records@COT.TN.gov. *See, T.C.A. 8-4-601.*

Thank you for your attention and assistance with this overdue matter.

Erik Cooper
The Gatlinburg Free Press

1216 East Parkway, #1413
Gatlinburg, Tennessee 37738

GatlinburgFreePress@Gmail.com

bcc

From: "William B. Marsh" <wbmarsh@tndagc.org>

Date: April 12, 2023 at 10:12:31 AM EDT

To: gatlinburgfreepress@gmail.com

Cc: "Jimmy B. Dunn" <jbdunn@tndagc.org>, "Ronald C. Newcomb" <renewcomb@tndagc.org>, "Stephanie N. Woods" <snwoods@tndagc.org>

Subject: FOIA Request 4/10/23

Mr. Cooper;

I response to your request for public documents pursuant to your FOIA request email dated April 10, 2023, the only public document responsive to your request is attached. All other matters pertaining to Grand Juries not resulting in a public document are matters of work product and/or open investigative files which are exempt from FOIA request.

W. Brownlow Marsh



Deputy District Attorney

355 East Broadway

Newport, Tennessee 37821

Office: 423.623.1285

Fax: 423.623.2012

Email: wbmarsh@tndagc.org

LEGAL CONFIDENTIAL: The information in this e-mail and in any attachment may contain information that is privileged either legally or otherwise. It is intended only for the attention and use of the named recipient. If you are not the intended recipient, you are not authorized to retain, disclose, copy or distribute the message and/or any of its attachments. If you received this e-mail in error, please notify me and delete this message.

From: **Gatlinburg Free Press** <gatlinburgfreepress@gmail.com>

Date: Mon, Apr 10, 2023 at 1:26PM

Subject: Fwd: Message from The Gatlinburg Free Press - Tennessee Public Records Request No. GFP-EC-TSA-094

To: <RCNewcomb@tndagc.org>, wbmarsh@tndagc.org <wbmarsh@tndagc.org>

Cc: James B. Dunn <JBDunn@tndagc.org>, Lauren Lamberth <Lauren.Lamberth@ag.tn.gov>, Herbert H., AG Slatery III <TNAttyGen@ag.tn.gov>, Brad Cannon <BCannon@seviercountyttn.org>

Re: Tennessee Public Records Request No.: GFP-EC-TSA-094

Dear Ronald Crockett Newcomb and "W.B." Marsh:

Greetings.

The Gatlinburg Free Press has been unable to identify any publicly-available information directing the submission of public records requests under the Tennessee Public Records Act ("T.P.R.A.") for submission of T.P.R.A. requests to the Office of the District Attorney General for the Fourth Judicial Circuit. Please advise.

In the absence of such publicly-available information, as directed by the Tennessee State

Attorney's Office, our submission was directed to the attention of James Bruce Dunn on this date. Please find our submission attached.

Without offering any explanation, in response to our T.P.R.A. request submitted, Mr. Dunn responded with your email addresses.

For the purposes of preserving the time elements required for a response from your Office under the T.P.R.A., and in the absence of any explanation for Mr. Dunn's response attached, this communication is submitted to your attention to preserve your obligations to respond to the request in accordance with the T.P.R.A.

Notice is given.

Erik Cooper
The Gatlinburg Free Press

1216 East Parkway, #1413
Gatlinburg, Tennessee 37738

GatlinburgFreePress@Gmail.com

bcc

----- Forwarded message -----

From: **Jimmy B. Dunn** <jbdunn@tndagc.org>

Date: Mon, Apr 10, 2023 at 11:05AM

Subject: Re: Message from The Gatlinburg Free Press - Tennessee Public Records Request No. GFP-EC-TSA-094

To: Gatlinburg Free Press <gatlinburgfreepress@gmail.com>

Cc: Brad Cannon <BCannon@seviercountyttn.org>, Lauren Lamberth <Lauren.Lamberth@ag.tn.gov>, Herbert H., AG Slatery III <TNAAttyGen@ag.tn.gov>

Renewcomb@tndagc.org
Wbmarsh@tndagc.org

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: Gatlinburg Free Press <gatlinburgfreepress@gmail.com>

Sent: Sunday, April 9, 2023 11:44:13 PM

To: Jimmy B. Dunn <JBDunn@tndagc.org>

Cc: Brad Cannon <BCannon@seviercountytn.org>; Lauren Lamberth <Lauren.Lamberth@ag.tn.gov>; Herbert H., AG Slatery III <TNAttyGen@ag.tn.gov>

Subject: Message from The Gatlinburg Free Press - Tennessee Public Records Request No. GFP-EC-TSA-094

Re: Tennessee Public Records Request No.: GFP-EC-TSA-094

Dear Records Custodian for the Sevier County District Attorney General's Office and James Bruce Dunn:

Greetings.

This communication shall serve as a public records request under the Tennessee Public Records Act and in accordance with the Public Records Policy for the Office of the District Attorney General for the Fourth Judicial Circuit, State of Tennessee.

The Gatlinburg Free Press has assigned the captioned request number to this matter as indicated above. Please utilize the captioned number when responding to this request.

The Gatlinburg Free Press seeks the following records from the Office of the District Attorney General for the Fourth Judicial Circuit, State of Tennessee:

(1) All documents, records, materials and things including, without limitation, all forms, documents and/or records in possession of the Office of the District Attorney General for the Fourth Judicial Circuit, State of Tennessee pertaining or relating in any manner or form to any waiver of Constitutional or Constitutionally-protected rights, whether civil in nature or otherwise, substantially substantively similar to or resembling in any manner or form the sample "Waiver" form submitted herewith. For the purposes of this portion of the request, the time period shall be for a period of ten (10) years beginning on or about March 26, 2013 and ending on or about March 27, 2023;

(2) All documents, records, materials and things including, without limitation, all forms, documents and/or records in possession of the Office of the District Attorney General for the Fourth Judicial Circuit, State of Tennessee pertaining or relating in any manner or form to any requirement of either the Sevier County Circuit Court and/or the Sevier County District Attorney General's Office for acknowledgment or waiver of any legal rights of an applicant and/or an affiant requesting to testify before a Sevier County Grand Jury under T.C.A. section 40-12-104. For the purposes of this portion of the request, the time period shall be for a period of ten (10) years beginning on or about March 26, 2013 and ending on or about March 27, 2023;

(3) All documents, records, materials and things including, without limitation, all forms, documents and/or records in possession of any Office of the District Attorney General for the Fourth Judicial Circuit, State of Tennessee pertaining or relating in any manner or form

to any waiver of Constitutional or Constitutionally-protected rights, whether civil in nature or otherwise, substantially substantively similar to or resembling in any manner or form the sample "Waiver" form submitted herewith. For the purposes of this portion of the request, the time period shall be for a period of five (5) years beginning on or about March 26, 2018 and ending on or about March 27, 2023; and

(4) All documents, records, materials and things including, without limitation, all forms, documents and/or records in possession of any Office of the District Attorney General for the Fourth Judicial Circuit, State of Tennessee pertaining or relating in any manner or form to any requirement of either the Sevier County Circuit Court and/or the Sevier County District Attorney General's Office for acknowledgment or waiver of any legal rights of an applicant and/or an affiant requesting to testify before a Grand Jury under T.C.A. section 40-12-104. For the purposes of this portion of the request, the time period shall be for a period of five (5) years beginning on or about March 26, 2018 and ending on or about March 27, 2023.

Please submit any questions or inquiries concerning this request via email to:
GatlinburgFreePress@Gmail.com.

Please advise of any cost greater than \$20.00 for production of any records responsive to this request.

Thank you for your timely attention and assistance with this matter.

Erik Cooper
The Gatlinburg Free Press

1216 East Parkway, #1413
Gatlinburg, Tennessee 37738

GatlinburgFreePress@Gmail.com

bcc

On Apr 3, 2023, at 9:01 AM, Lauren Lamberth <Lauren.Lamberth@ag.tn.gov> wrote:

This is the link for more information about that office including various contact info - [District 4 - Tennessee District Attorneys General Conference \(tndagc.org\)](https://www.tndagc.org)

From: Gatlinburg Free Press <gatlinburgfreepress@gmail.com>
Sent: Friday, March 31, 2023 6:42 AM
To: Lauren Lamberth <Lauren.Lamberth@ag.tn.gov>
Cc: Amy L. Wilhite <Amy.Wilhite@ag.tn.gov>; Elizabeth Lane <Elizabeth.Lane@ag.tn.gov>; James B. Dunn <JBDunn@TNDAGC.org>
Subject: Tennessee Public Records Request No: GFP-EC-TSA-094

Ms. Lamberth -

Greetings. Thank you for your reply.

Please forward the request to your District Office, or, alternatively, please provide the contact information for a TPRA Request remitted to the Fourth Judicial Circuit.

Thanks.

Erik Cooper
Writer
The Gatlinburg Free Press

bcc

On Mar 28, 2023, at 1:04 PM, Lauren Lamberth <Lauren.Lamberth@ag.tn.gov> wrote:

Mr. Cooper,

We received your 3/28/23 email requesting various records in possession of the Office of the District Attorney General for the Fourth Judicial Circuit for the State of Tennessee or in the possession of any Office of the District Attorney General in the State of Tennessee.

This is the Office of the Tennessee Attorney General, a single state office separate and distinct from the District Attorneys General Offices, of which there are several. Accordingly, we do not have any responsive records.

Thank you,

Lauren S. Lamberth, CIPP/US, CIPT

Special Counsel to the Chief Deputy

Office of the Tennessee Attorney General

P.O. Box 20207, Nashville, Tennessee 37202

615-532-5681

Lauren.Lamberth@ag.tn.gov

<image001.jpg>

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Begin forwarded message:

From: Gatlinburg Free Press <gatlinburgfreepress@gmail.com>

Date: March 28, 2023 at 12:10:50 PM EDT

To: "Herbert H., AG Slatery III" <TNAttyGen@ag.tn.gov>

Subject: Tennessee Public Records Request No. GFP-EC-TSA-094

Re: Tennessee Public Records Request No.: GFP-EC-TSA-094

Dear Records Custodian for the Office of the Attorney General for the State of Tennessee:

Greetings.

This communication shall serve as a public records request under the Tennessee Public Records Act and in accordance with the Public Records Policy for the Office of the Tennessee Attorney General.

The Gatlinburg Free Press has assigned the captioned request number to this matter as indicated above. Please utilize the captioned number when responding to this request.

The Gatlinburg Free Press seeks the following records from The Office of the Tennessee Attorney General:

(1) All documents, records, materials and things including, without limitation, all forms, documents and/or records in possession of the Office of the District Attorney General for the Fourth Judicial Circuit for the State of Tennessee pertaining or relating in any manner or form to any waiver of Constitutional or Constitutionally-protected rights, whether civil in nature or otherwise, substantially substantively similar to or resembling in any manner or form the sample "Waiver" form submitted herewith. For the purposes of this portion of the request, the time period shall be for a period of ten (10) years beginning on or about March 26, 2013 and ending on or about March 27, 2023;

(2) All documents, records, materials and things including, without limitation, all forms, documents and/or records in possession of the Office of the District Attorney General for the Fourth Judicial Circuit for the State of Tennessee pertaining or relating in any manner or form to any requirement of either the Sevier County Circuit Court and/or the Sevier County District Attorney General's Office for acknowledgment or waiver of any legal rights of an applicant and/or an affiant requesting to testify before a Sevier County Grand Jury under T.C.A. section 40-12-104. For the purposes of this portion of the request, the time period shall be for a period of ten (10) years beginning on or about March 26, 2013 and ending on or about March 27, 2023;

(3) All documents, records, materials and things including, without limitation, all forms, documents and/or records in possession of any Office of the District Attorney General in the State of Tennessee pertaining or relating in any manner or form to any waiver of Constitutional or Constitutionally-protected rights, whether civil in nature or otherwise, substantially substantively similar to or resembling in any manner or form the sample "Waiver" form submitted herewith. For the purposes of this portion of the request, the time period shall be for a period of five (5) years beginning on or about March 26, 2018 and ending on or about March 27, 2023; and

(4) All documents, records, materials and things including, without limitation, all forms, documents and/or records in possession of any Office of the District Attorney General in the State of Tennessee pertaining or relating in any manner or form to any requirement of either the Sevier County Circuit Court and/or the Sevier County District Attorney General's Office for acknowledgment or waiver of any legal rights of an applicant and/or an affiant requesting to testify before a Grand Jury under T.C.A. section 40-12-104. For the purposes of this portion of the request, the time period shall be for a period of five (5) years beginning on or about March 26, 2018 and ending on or about March 27, 2023.

Please submit any questions or inquiries concerning this request via email to:
GatlinburgFreePress@Gmail.com.

Please advise of any cost greater than \$20.00 for production of any records responsive to this request.

Thank you for your timely attention and assistance with this matter.

Erik Cooper
The Gatlinburg Free Press

1216 East Parkway, #1413
Gatlinburg, Tennessee 37738

GatlinburgFreePress@Gmail.com

bcc

The Gatlinburg Free Press, et. al. v. James Bruce Dunn, et. al.
Sevier County Circuit Court for the Fourth Judicial District
Case Number: (pending)

EXHIBIT E

Reply from Mr. Dunn and the Sevier County District Attorney General's Office
to the Petitioners'/Plaintiffs' Public Records Request Dispute

("Reply")

William B. Marsh <wbmarsh@tndagc.org>

Fri, Apr 28, 2023 at 2:56 PM

To: Gatlinburg Free Press <gatlinburgfreepress@gmail.com>

Cc: "Jimmy B. Dunn" <jbdunn@tndagc.org>, "Stephanie N. Woods" <snwoods@tndagc.org>, "Ronald C. Newcomb" <rcnewcomb@tndagc.org>

Mr. Cooper;

Our records are maintained in files and you have not sufficiently identified any file that we might produce pursuant to your request.

Your request also appears to ask our office to do research for you and this we are not required to do. Please see T.C.A. Sect 1—7-503 (4)

1. Which states: "This section shall not be construed as requiring a governmental entity to sort through files to compile information or to create or recreate a record that does not exist. Any request for inspection or copying of a public record shall be sufficiently detailed to enable the governmental entity to identify the specific records for inspection and copying."

You have provided insufficient detail in your request and our office cannot honor it.

W. Brownlow Marsh



Deputy District Attorney
355 East Broadway
Newport, Tennessee 37821

Office: 423.623.1285

Fax: 423.623.2012

Email: wbmarsh@tndagc.org

The Gatlinburg Free Press, et. al. v. James Bruce Dunn, et. al.
Sevier County Circuit Court for the Fourth Judicial District
Case Number: (pending)

EXHIBIT F

Response from Mr. Dunn and the Sevier County District Attorney General's Office
to the Petitioners'/Plaintiffs' Public Records Request for the Waiver and Similar Documents

("Supplemental Response")



Gatlinburg Free Press <gatlinburgfreepress@gmail.com>

Records Request No. GFP-EC-TSA-094

1 message

William B. Marsh <wbmarsh@tndagc.org>

Mon, Jul 3, 2023 at 1:48 PM

To: "gatlinburgfreepress@gmail.com" <gatlinburgfreepress@gmail.com>

Cc: "Jimmy B. Dunn" <jbdunn@tndagc.org>, "Ronald C. Newcomb" <rcnewcomb@tndagc.org>

Mr. Cooper;

In response to your notice of dispute, please be advised that our office is relying on Tennessee Code Annotated Section 10-7-503 (4); which provides:

4. This section shall not be construed as requiring a governmental entity to sort through files to compile information or to create or recreate a record that does not exist. Any request for inspection or copying of a public record shall be sufficiently detailed to enable the governmental entity to identify the specific records for inspection and copying.

W. Brownlow Marsh



Deputy District Attorney

355 East Broadway

Newport, Tennessee 37821

Office: 423.623.1285

Fax: 423.623.2012

Email: wbmarsh@tndagc.org

LEGAL CONFIDENTIAL: The information in this e-mail and in any attachment may contain information that is privileged either legally or otherwise. It is intended only for the attention and use of the named recipient. If you are not the intended recipient, you are not authorized to retain, disclose, copy or distribute the message and/or any of its attachments. If you received this e-mail in error, please notify me and delete this message.

The Gatlinburg Free Press, et. al. v. James Bruce Dunn, et. al.
Sevier County Circuit Court for the Fourth Judicial District
Case Number: (pending)

EXHIBIT G

Order Entered May 1, 2023 by The Honorable Judge Rex Henry Ogle
In Re: Sevier County Grand Jury /
Erik Cooper, Petitioner to Appear Before the Sevier County Grand Jury
Sevier County Circuit Court for the Fourth Judicial District
File No. 2023-PJ-04-03

(“Order”)

IN RE: SEVIER COUNTY GRAND JURY

ERIK COOPER, PETITIONER
TO APPEAR BEFORE THE
SEVIER COUNTY GRAND JURY

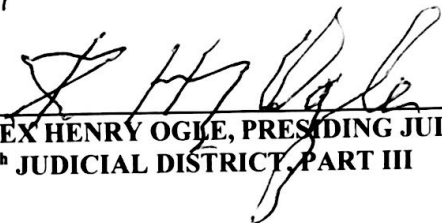
CIRCUIT COURT
FILED
HOUR 11:45 A M
MAY 01 2023
KARENATCHLEY, CLERK
SEVIER COUNTY, TN

This matter initially came before the Court upon a hearing of the Petition for Judicial Interpretation and Relief filed by Erik Cooper pertaining to his attempted appearance in front of the Sevier County Grand Jury on March 27, 2023. After hearing argument and proffered testimony in this matter, the Court hereby finds as follows:

1. That Mr. Cooper has the right under T.C.A. §40-12-104 *et seq.* to appear in front of the Grand Jury Foreman and two Grand Jurors of Mr. Cooper's choice without the interference of any person whatsoever.
2. That Mr. Cooper is not required to sign a Waiver of Immunity in order to appear before the Grand Jury Foreman and two Grand Jurors of Mr. Cooper's choice.
3. That Mr. Cooper advised the Court that he intends to appear before the Grand Jury Foreman and two Grand Jurors on May 1, 2023. Absent interference of Mr. Cooper's right to testify pursuant to T.C.A. §40-12-104 *et seq.*, the Court will not intervene further. A copy of the official transcript of the hearing conducted on April 24, 2023 as filed in Sevier County Circuit Court on April 28, 2023 at 3:42 p.m. is hereby attached and incorporated herein by reference.

4. As the Presiding Judge of the Fourth Judicial District, the Court herein advises all parties that it is available this date for any hearings that should be necessary and allowable by law.

ENTERED this the 1st day of May, 2023.



REX HENRY OGLE, PRESIDING JUDGE
4th JUDICIAL DISTRICT, PART III

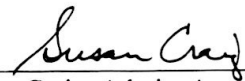
CERTIFICATE OF SERVICE

I, Susan Craig, Administrative Assistant to Honorable Rex Henry Ogle, Presiding Judge, do hereby certify that a true and exact copy of the foregoing Order has been forwarded to the Sevier County Sheriff's Office for Hand-Delivery to the following:

Mr. Erik Cooper

Mr. James B. "Jimmy" Dunn
District Attorney General
4th Judicial District

This 1st day of May, 2023.



Susan Craig, Admin. Asst. to
Honorable Rex Henry Ogle, Presiding Judge
4th Judicial District
P. O. Box 4245
Sevierville, TN 37864-4245

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE IN RE: Sevier County) Grand Jury))No. 2023-PJ-04-03 ERIK COOPER,) Petition to Appear) * * * * * MOTION April 24, 2023 Hon. Rex Henry Ogle, Presiding ===== JEFF RUSK COURT REPORTING & VIDEO Registered Professional Reporters Certified Legal Video Specialists Valerie Sulfridge, Digital Court Reporter 805 Eleanor Street, N.E. Knoxville, Tennessee 37917 (865) 246-7656 Jeff@JeffRusk.com	Page 3 1 (Proceedings began at 9:13 AM) 2 THE COURT: Everything that has 3 been filed by Mr. Cooper, I've read it 4 fairly extensively, to be quite candid with 5 you. 6 And the Court, for the record, Mr. 7 Cooper had sent some matters to all four of 8 the circuit judges in this matter concerning 9 an appearance, a potential appearance before 10 the grand jury here on a previous occasion, 11 I believe it's on March 27th. Am I right, 12 Mr. Cooper? 13 MR. COOPER: Good morning, Your 14 Honor. Yes, you are correct. 15 THE COURT: Okay. And so the Court 16 has reviewed that record, and I wanted to 17 point out just a couple of things, and this 18 is not a big deal, but I want to say to you, 19 Mr. Cooper, you file things and say they're 20 confidential sometimes, and I'm not picking 21 at you, I'm not. But nothing filed with the 22 Court is confidential, because we cannot, in 23 contested matters, unless there's a statute 24 that says it is, which there's very few of 25 those, but anything filed with a judge is
Page 2 1 APPEARANCES: 2 FOR THE PETITIONER: 3 Erik Cooper 4 1216 East Parkway 5 #1413 6 Gatlinburg, Tennessee 37738 7 CooperErik@aol.com 8 9 FOR THE RESPONDENTS: 10 Ron C. Newcomb, Esq. 11 Assistant District Attorney General 12 125 Court Avenue 13 Suite 301 E 14 Sevierville, Tennessee 37862 15 RCNewcomb@tndagc.org 16 17 James B. Dunn, Esq. 18 District Attorney General 19 125 Court Avenue 20 Suite 301 E 21 Sevierville, Tennessee 37862 22 23 24 25	Page 4 1 not confidential, and we must disclose it 2 and put it in the court file. So, as I say, 3 I'm not fussing at you, I'm just saying that 4 for your benefit. 5 MR. COOPER: Thank you, Honor. 6 Just to be clear, I don't think anything was 7 filed as confidential. 8 THE COURT: Well, for some reason, 9 I thought it was, but I'm sorry. 10 MR. COOPER: Your Honor, I filed a 11 motion last week to file a pleading today 12 under seal. 13 THE COURT: Okay. 14 MR. COOPER: Which involves 15 confidential matters involving grand jury 16 proceedings, as well as the Court's personal 17 involvement in previous complaints involving 18 corruption of the grand jury process. 19 THE COURT: The Court's? 20 MR. COOPER: The Court's, Your 21 Honor's. So for that reason, I asked to 22 file under seal so that way the Court could 23 address the issue that you, Your Honor, may 24 have a conflict of interest and have to 25 recuse yourself from these proceedings.

Page 5

1 THE COURT: Okay. You tell me why.
 2 You tell me.
 3 MR. COOPER: And I defer to your
 4 judgment on that in my motion to file under
 5 seal.
 6 THE COURT: Well --
 7 MR. COOPER: Your Honor, the
 8 pattern of misconduct involving corruption
 9 of the grand jury panel proceedings is not
 10 new to this Court. These are issues that
 11 this Court has addressed previously that
 12 have only worsened because Your Honor, in
 13 the capacity of a presiding judge, has never
 14 intervened in the complaints brought to your
 15 attention. As a result of that, the
 16 complaints brought to your attention were
 17 reported to the judicial board --
 18 THE COURT: Right.
 19 MR. COOPER: And taken up as an
 20 issue.
 21 THE COURT: And dismissed.
 22 MR. COOPER: No, Your Honor. I
 23 don't have an outcome of that investigation
 24 at this time.
 25 For that reason, in my opinion, a

Page 6

1 potential conflict of interest may exist,
 2 and I bring that to the Court's attention.
 3 If you choose to recuse yourself
 4 for the appearance of bias, prejudice or
 5 partiality involving these proceedings, that
 6 was the matter I wanted to bring to your
 7 attention.
 8 THE COURT: You're entitled to
 9 bring that to the Court's attention.
 10 MR. COOPER: Thank you.
 11 In the event that you deem that it
 12 is not an element of bias or prejudice or
 13 compromises your judicial ethics to continue
 14 these proceedings, then your decision today
 15 may or may not be subject to appeal on a
 16 decision to grant or deny that motion for
 17 recusal.
 18 THE COURT: All final decisions of
 19 a court are subject to appeal --
 20 MR. COOPER: Yes, Your Honor.
 21 THE COURT: -- so that didn't
 22 bother me at all.
 23 MR. COOPER: I wanted to set the
 24 tone from the beginning so that you're aware
 25 of the potential conflict and defer to the

Page 7

1 Court's --
 2 THE COURT: Well, there have been
 3 rulings by the Board of Judicial Conduct and
 4 previously by the Court of the Judiciary
 5 that the mere filing of a complaint against
 6 a judge in most circumstances does not
 7 constitute a reason to recuse.
 8 And so the Court does not feel, Mr.
 9 Cooper, the Court -- you filed a very
 10 respectful petition. The Court does not
 11 have any problem with anything that you
 12 filed. I've reviewed it. I understand, I
 13 think, where everybody is coming from. The
 14 record is clear from what's been filed by
 15 both sides, and the Court is perfectly
 16 capable, I think, to fairly and impartially
 17 rule.
 18 I've always told jurors, when we do
 19 orientation, Mr. Cooper, that the only thing
 20 I can promise them, and it's the same thing
 21 with a judge, is that somebody's going to
 22 disagree with what you do. And that's life.
 23 That's the roles we have. But I have
 24 nothing against you at all. Have no reason
 25 to. I mean, look, I'm a big boy. People

Page 8

1 can file complaints and those sorts of
 2 things, and that's fine. So we're good.
 3 We're good.
 4 MR. COOPER: Thank you, Your honor.
 5 THE COURT: Yeah.
 6 MR. COOPER: In order to proceed
 7 with today's hearing --
 8 THE COURT: Yes, sir.
 9 MR. COOPER: -- I'd ask for the
 10 Court's consideration to close the
 11 courtroom.
 12 THE COURT: I cannot do that.
 13 MR. COOPER: The matters that I'm
 14 about to address involve proceedings of the
 15 grand jury.
 16 THE COURT: Sir, we cannot close.
 17 There's one exception, I believe, to the
 18 closing of courtrooms, and that pertains to
 19 juvenile proceedings.
 20 MR. COOPER: I defer to the Court's
 21 judgment. I brought the issue to your
 22 attention.
 23 THE COURT: Well, the Tennessee
 24 Constitution says courts shall be open. And
 25 so this issue -- I will say this to you, Mr.

Page 9 1 Cooper. What you wanted to tell the grand 2 jury, for purposes of what this Court has to 3 decide, is not relevant. 4 MR. COOPER: Correct. 5 THE COURT: There's two issues that 6 I think -- two parts of this case that you 7 brought to the Court's attention. Number 8 one, do you or any other citizen have the 9 right to testify in front of the grand jury? 10 The answer to that is no. 11 But the other side of that is, do 12 you or any other citizen have the right to 13 request a meeting with the foreman of the 14 grand jury and two other persons of your 15 choosing? 16 And the third thing is, as I 17 understand it from what's been filed, do you 18 have to sign a waiver of immunity in order 19 to testify? Am I right on this? 20 MR. COOPER: You're partially 21 right, Your Honor. 22 THE COURT: Okay. Tell me the rest 23 of it. 24 MR. COOPER: There are six issues 25 that are in the petition that lay out the	Page 11 1 proceedings conducted on that date. This is 2 not the first instance of misconduct alleged 3 against the district attorney general's 4 office under the direction of James B. 5 Dunn, who is also with us today. Rather, 6 this is only the latest instance of 7 misconduct documented again and again in the 8 absence of a presiding judge over the grand 9 jury proceedings. 10 On March 27th, I appeared to 11 testify and present evidence before a grand 12 jury panel in accordance with Tennessee Code 13 Annotated Section 40-12-104. This code 14 provides for individuals wishing to be heard 15 by the grand jury who have knowledge of 16 indictable offenses occurring within our 17 county. 18 Assistant district attorney general 19 Ron Newcomb interfered with the panel's 20 proceedings and obstructed justice by 21 requiring me to execute a waiver, that Mr. 22 Newcomb referred to as a waiver of 23 constitutional rights. That waiver is 24 attached as an exhibit to the petition. 25 Mr. Newcomb threatened me that if
Page 10 1 request for judicial interpretation and 2 relief. 3 THE COURT: Okay. Now, what are 4 the issues you want me to address? 5 MR. COOPER: I'd like to get into 6 those with my argument -- 7 THE COURT: Yes, sir. 8 MR. COOPER: -- if we're prepared 9 to move forward. 10 THE COURT: Yes, sir. 11 MR. COOPER: Thank you. 12 Your Honor, I'd also like to point 13 out for the record that there's two 14 attorneys in the courtroom that have no 15 other reason to be here unless they show 16 cause today. One is Matthew Joshua Evans, 17 and the other is Richard Alexander Johnson. 18 We'll need that on the record for later. 19 Your Honor, we're here this morning 20 on my petition for judicial interpretation 21 and relief. As you know, the Court received 22 a letter from me dated March 27th, 2023 23 addressing allegations of misconduct 24 committed by the Seiver County district 25 attorney general's office during grand jury	Page 12 1 my testimony was deemed untruthful, I could 2 be prosecuted for perjury before the grand 3 jury panel. Mr. Newcomb demanded that I 4 sign the waiver or be prohibited from 5 testifying before the panel. Mr. Newcomb 6 demanded the panel conduct a vote to 7 determine whether or not the panel would 8 allow me to testify if I chose not to sign 9 the waiver. 10 I advised Mr. Newcomb and the panel 11 that no statute under the Tennessee code 12 permitted such a vote. No statute under the 13 Tennessee code required such a waiver to 14 appear and testify before the grand jury. 15 But Mr. Newcomb convinced the panel 16 otherwise, and a vote was conducted. 17 After the vote was concluded, I was 18 advised by the grand jury foreman, Jim 19 Medlin, that the panel had voted not to 20 allow me to testify or present evidence 21 because I refused to waive my constitutional 22 rights. Outrageous. 23 I refused to execute any waiver 24 without first having the document reviewed 25 by a lawyer, just as Your Honor might do.

Page 13 1 Mr. Newcomb advised me that if I refused to 2 sign the waiver I would not be permitted to 3 testify or present evidence of an indictable 4 criminal offense until I did so. 5 I have testified on several 6 occasions before the grand jury over the 7 past five or more years, and I have never 8 been requested to waive my constitutional 9 rights or to sign any such document. 10 I was denied access to the grand 11 jury panel by the Seiver County district 12 attorney general's office on March 27th, 13 2023. 14 On the hearing date, Judge James 15 Gass was the presiding judge over grand jury 16 proceedings. After requesting Judge Gass's 17 intervention in the obstruction of justice 18 caused by the official misconduct committed 19 by Mr. Newcomb on March 27th, Judge Gass 20 refused my request for assistance and 21 instead asked me to put my concerns in 22 writing. My letter to Judge Gass, dated 23 March 27th and forwarded to you, Your Honor, 24 has been deemed a petition for judicial 25 interpretation and relief. That petition is	Page 15 1 Court may be consulted by the grand jury 2 panel for guidance in making its 3 determination. 4 No. 4, determining the grand jury 5 foreperson to be the governor or director of 6 grand jury proceedings and not members of 7 the office of the district attorney general. 8 No. 5, determining the rights of 9 the petitioner to receive assistance when 10 requested from the presiding judge during 11 grand jury proceedings. 12 And No. 6, determining the rights 13 of the grand jury panel to consult the court 14 or the district attorney general when a 15 conflict of interest arises during grand 16 jury panel proceedings. For example -- 17 THE COURT: I'm sorry. Let me 18 interrupt you just a second. 19 MR. COOPER: Yes, Your Honor. 20 THE COURT: When you're talking 21 about a conflict of interest, tell me what 22 you're talking about. 23 MR. COOPER: I will get to that, 24 Your Honor. I will get to that. 25 For example, an applicant wishing
Page 14 1 now ripe before this Court today. 2 THE COURT: Yes, sir. 3 MR. COOPER: On Page 7 of my 4 petition filed last week, I asked the Court 5 to provide for judicial interpretation of 6 six concerns. Those concerns are: 7 No. 1, determining the rights of 8 the petitioner as an applicant appearing 9 before the Seiver County grand jury to 10 testify of knowledge of the commission of a 11 public offense, triable or indictable, in 12 Seiver County in accordance with Tennessee 13 Code Annotated Section 40-12-104. 14 No. 2, determining the rights of 15 the petitioner to refuse waiver of 16 constitutionally-protected rights and 17 liberties when appearing to testify before 18 or offer evidence to a grand jury in 19 accordance with TCA 40-12-104. 20 No. 3, determining or limiting the 21 participation of the district attorney 22 general's office in grand jury proceedings 23 as provided for under TCA 40-12-104. For 24 example, the statute clearly says that the 25 district attorney general's office or the	Page 16 1 to testify before a grand jury about 2 knowledge of the commission of a public 3 offense, triable or indictable in Seiver 4 County, under 40-12-104 when it permits the 5 panel to consult the district attorney 6 general or the court. 7 I contend that Mr. Newcomb, by and 8 through his acts committed for and on behalf 9 of Mr. Dunn, violated Tennessee Code 10 Annotated Section 39-16-507, Subsection A 11 Subsection 2. 12 That section, Your Honor, clearly 13 states, and I quote for the Court, "A person 14 commits an offense who, by means of 15 coercion, influences or attempts to 16 influence a witness or a prospective witness 17 in an official proceeding with intent to 18 influence the witness to withhold any 19 truthful testimony, truthful information, 20 document or thing." 21 By threatening a witness with 22 perjury if testimony offered to a grand jury 23 is deemed untrue by the sole determination 24 of the district attorney general's office, 25 the DA is violating 39-16-507, and I intend

Page 17 1 to pursue an indictment against Mr. Newcomb 2 for violation of that statute. 3 Additionally, I contend that Mr. 4 Newcomb's conduct on March 27th also 5 violated Tennessee Code Section 39-16-402, 6 which provides privileges as follows: "A 7 public servant commits an offense who with 8 the intent to obtain a benefit or to harm 9 another intentionally or knowingly, 1, 10 commits an act relating to the public 11 servant's office or employment that 12 constitutes an unauthorized exercise of 13 official power." 14 Mr. Newcomb demanded that I sign a 15 waiver of constitutional rights without the 16 benefit of review by legal counsel under 17 threat and duress to deny my application to 18 testify before the grand jury panel. And 19 then he denied my right afforded under 20 40-12-104. Neither Mr. Dunn nor Mr. Newcomb 21 had that authority or official power in 22 their employment as public servants. 23 Subsection 2, "An individual who 24 commits an act under color of office or 25 employment that exceeds the public servant's	Page 19 1 the first time the district attorney 2 general's office has interfered with the 3 proceedings of a grand jury panel under the 4 direction and governance of Mr. Dunn and his 5 staff, and in the absence of any judge 6 serving, as required, as the presiding judge 7 over those proceedings. 8 I have personally witnessed Mr. 9 Dunn and his staff offer their unsolicited 10 opinions to grand jurors during panel 11 proceedings when grand jurors did not 12 solicit any guidance; take control of the 13 grand jury proceedings and question the 14 affiant as if they were questioning a 15 witness called to testify; conduct their own 16 research before the grand jury panel was 17 ever impaneled and offer such research to 18 the panel to obstruct the panel's vote in 19 favor of indicting the accused; threatening 20 and intimidating witnesses who appear to be 21 summoned before the panel for testimony; 22 coerce and persuade the grand jury 23 foreperson outside of the boundaries and 24 duties of the foreperson; conduct panel 25 proceedings --
Page 18 1 official power." 2 Not only does Mr. Newcomb's demand 3 for my waiver of constitutional rights 4 exceed his official power as a public 5 servant, but so too does Mr. Newcomb's 6 demand for the panel to conduct a vote that 7 is not permitted under 40-12-104 or any 8 other statute. Mr. Newcomb's conduct on 9 March 27th amounts to an obstruction of 10 justice. 11 Lastly, Subsection 4, "violates a 12 law relating to the public servant's office 13 or employment." 14 Mr. Newcomb's threat of pursuing a 15 perjury charge against a witness appearing 16 before the grand jury amounts to a violation 17 of 39-16-507 for coercion and persuasion of 18 a witness. 19 Again, based upon Mr. Newcomb's 20 criminal misconduct witness on March 27th, I 21 have applied to appear before the grand jury 22 on May 1st, seeking indictments against Mr. 23 Newcomb for violation of these criminal 24 matters. 25 These events of March 27th are not	Page 20 1 THE COURT: Say that one more time. 2 MR. COOPER: Absolutely. 3 Threatening and intimidating witnesses who 4 appear to be summoned before the panel for 5 testimony; coerce and persuade the grand 6 jury foreperson outside of the boundaries 7 and the duties of the foreperson; conduct 8 panel proceedings in a broom closet on a hot 9 August day right over there; conduct panel 10 proceedings with a confidential testimony 11 offered to the panel as overheard by 12 passersby outside of the unfit panel forum, 13 like broom closets; and other conduct I 14 reported to you, Your Honor, as the 15 presiding judge after such misconduct was 16 witnessed during grand jury proceedings 17 conducted before the March 27th, 2023 18 proceeding. 19 Equally of concern, however, is the 20 absence of any presiding judge over grand 21 jury proceedings when concerns become 22 evident. On some occasions, the presiding 23 judge is not even in the courthouse, but 24 rather on the bench in another county's 25 courthouse.

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1 THE COURT: Well, let me address
2 that issue while you're talking about that,
3 please, sir.
4 Judges in Tennessee are not --
5 well, let me say it this way. The grand
6 jury is a totally separate and independent
7 body unless we are requested by the grand
8 jury to give them advice, as you've already
9 talked about. Absent something being filed
10 in court, Mr. Cooper, courts do not
11 intervene in that process.
12 As you well know, the grand jury is
13 the most important body, most powerful body
14 in our form of government, because they have
15 the right to accuse people -- or they have
16 the ability to accuse people of crimes and
17 make them face illegal proceedings. And
18 simply informing a judge -- you need to file
19 things. Judges just don't give advisory
20 opinions. You have to file pleadings.
21 That's the reason. And as far as no judge
22 being here when the grand jury makes its
23 report, sir, the grand jury can report --
24 MR. COOPER: That is not what I
25 said, Your Honor.

Page 22

1 THE COURT: Well, but just --
2 MR. COOPER: I didn't say make you
3 report.
4 THE COURT: Don't argue with me,
5 Mr. Cooper. Don't argue.
6 MR. COOPER: Your Honor, you're
7 interrupting my argument.
8 And what I was saying was that the
9 judge is not in the courthouse, period. The
10 fact that a grand jury can call on a judge
11 or not does have a bearing on whether or not
12 the court is present. If the court's on the
13 bench in another county, a grand jury can't
14 access.
15 THE COURT: We cover in four
16 counties, Mr. Cooper, and I'm sorry for
17 that, but we do.
18 And the grand jury reports its
19 indictments and those sorts of things to the
20 clerk of the court. They record those
21 devices. Now -- or they record those
22 reports from the grand jury. They're
23 indictments, they're presentments, they're
24 no true bills. The judges do not have to be
25 there for that. And sometimes we are in

Page 23

1 other counties, but we are accessible to
2 people.
3 But you need to file things. Now,
4 I know you don't like that.
5 MR. COOPER: I respectfully
6 disagree that the Court's available.
7 THE COURT: Well --
8 MR. COOPER: I've witnessed before
9 where the panel has sought out the presiding
10 judge and can't access the presiding judge
11 because he is not in the courthouse. I
12 appreciate that the judge may be available
13 by phone in another county. However, with
14 all due respect to the Court, if a grand
15 jury panel is conducting official
16 proceedings in this county, and the statute
17 provides for that panel to consult the
18 presiding judge --
19 THE COURT: Hunting down the judge.
20 MR. COOPER: Hunting down, not
21 informing the judge, consult is what the
22 statute says, 40-12-104.
23 THE COURT: Mr. Cooper, I told you
24 what my position is.
25 MR. COOPER: I wasn't asking for

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1 argument. I was simply making a point.
2 THE COURT: Go on with the rest of
3 your statement.
4 MR. COOPER: My point is is that
5 the Court's not in the county, and I've
6 witnessed, as I was testifying --
7 THE COURT: You've already said
8 that. I've heard that.
9 MR. COOPER: As I have testified, I
10 have witnessed the grand jury being unable
11 to access the presiding judge over official
12 proceedings.
13 THE COURT: Okay.
14 MR. COOPER: This nonsense must
15 stop and must stop now.
16 The Court, as presiding judge, must
17 actively involve itself in grand jury
18 proceedings conducted in this county, not
19 passively remain on the sidelines if ever
20 called upon.
21 The Court cannot assume some
22 inherent trust in Mr. Dunn and his staff to
23 conduct grand jury proceedings in accordance
24 with 40-12-104. They have not and did not
25 maintain the Court's trust on March 27th.

Page 25 1 I ask you, Your Honor, to consider 2 the relief requested in my petition and to 3 award that relief here today. 4 THE COURT: Okay, sir. 5 MR. COOPER: I am scheduled to 6 appear again before the grand jury panel on 7 May the 1st, 2023, and the statute of 8 limitations governing the crimes accused is 9 quickly about to toll. 10 THE COURT: Okay, sir. 11 MR. COOPER: Without your 12 intervention, these acts and misconduct that 13 I have witnessed time and time again, and 14 have a witness if we need to call upon her 15 to testify, for about five years now will 16 continue to occur again and again during -- 17 THE COURT: Let me ask you this 18 question -- 19 MR. COOPER: -- grand jury 20 proceeding. 21 THE COURT: -- about what you're 22 seeking from the Court. 23 So you are seeking to appear in 24 front of the grand jury foreman and two 25 grand jurors of your choice without	Page 27 1 MR. COOPER: The statute? 2 THE COURT: Yes, sir. 3 MR. COOPER: Sure. 4 THE COURT: You do not have to sign 5 a waiver of your immunity in order for you 6 to testify, and in order for the grand jury 7 foreman and the other two grand jurors to 8 give you permission to appear before the 9 grand jury. You do not have to sign that. 10 MR. COOPER: So is the Court saying 11 that Mr. Newcomb's conduct on March 27th 12 requiring that waiver was improper? 13 THE COURT: I am saying that you do 14 not have to sign that. 15 MR. COOPER: Thank you. 16 THE COURT: The Court is not here 17 today -- this is not a proceeding for the 18 Court to make findings of fact about whether 19 or not the attorney general's office -- I 20 mean, if you're able to go to the grand jury 21 and get an indictment against anyone, then 22 the Court will have to deal with those 23 issues at that point. 24 But the Court is here, as I see my 25 role today, sir, is to determine what your
Page 26 1 executing a waiver of immunity, as I 2 understand what you filed. 3 MR. COOPER: That is one of the six 4 things listed. 5 THE COURT: That's three of the 6 things that you listed, isn't it? 7 MR. COOPER: It's No. 2, Your 8 Honor. Determining the rights of the 9 petitioner to refuse waiver of 10 constitutionally-protected rights or 11 liberties under the statute. 12 THE COURT: Right. Without 13 interference from anybody else, that's 14 basically what you're asking the Court. 15 MR. COOPER: If the Court can find 16 a statute that says that an affiant or an 17 applicant who wishes to testify under 18 40-12-104 must first waive their 19 constitutionally-protected civil rights or 20 liberties -- 21 THE COURT: Do you want me to tell 22 you what my answer is now? 23 MR. COOPER: Your answer to what, 24 Your Honor? 25 THE COURT: To that.	Page 28 1 rights are to testify, to present your 2 issues to the grand jury foreman and two 3 other grand jurors of your choice. And you 4 have that absolute right. You do not have 5 to waive your immunity because you're not 6 immune from -- the only time an immunity 7 issue comes up is if a witness to a grand -- 8 or if a person, a citizen, is subpoenaed or 9 ordered by a court to testify in front of 10 the grand jury. 11 Once that happens, if that happens, 12 then that witness -- there's what's called 13 transactional immunity. And so that witness 14 is immune from being prosecuted for anything 15 that they've testified about. That's the 16 law. So that's what I think. 17 MR. COOPER: Thank you, Your Honor. 18 Regarding the other issues in the 19 petition? 20 THE COURT: Yes, sir. Well, let me 21 hear from the attorney general's office on 22 that. Hear from both sides. 23 MR. COOPER: Thank you, Your Honor, 24 for the Court's time today. 25 THE COURT: Yes, sir.

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1 MR. NEWCOMB: Good morning, Your
2 Honor.
3 THE COURT: And if we can give Mr.
4 Cooper a seat here somewhere in the area
5 down front here, please.
6 Yes, sir.
7 MR. NEWCOMB: Your Honor, it's the
8 State's position that the independent
9 constitutional body of the grand jury, as
10 well as the district attorney general's
11 office in this situation acted completely
12 within its then authority.
13 If I could approach the bench with
14 several authorities.
15 First of all, Your Honor, I will
16 say that the complete actions of the grand
17 jury foreman and the panel the state avers
18 was within their constitutional authority.
19 The actions of the district attorney
20 general's office, including the presentation
21 of the waiver, the state avers is within its
22 authority.
23 The secret vote not to hear Mr.
24 Cooper after we both excused is within that
25 three person panel's authority, and that Mr.

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1 Cooper does not have a right to appear
2 before that three-person panel.
3 His only statutory --
4 THE COURT: I disagree with you on
5 that, General.
6 MR. NEWCOMB: Yes, sir. I
7 understand. If I could argue --
8 THE COURT: Yes, sir.
9 MR. NEWCOMB: All right. First of
10 all, Your Honor, if I could approach the
11 bench with several authorities. And I have
12 copies for Mr. Cooper.
13 The first, if I could approach,
14 Your Honor. State versus Culbreath.
15 THE COURT: I wish I'd had these
16 before today, General.
17 MR. NEWCOMB: I'm sorry, Your
18 Honor.
19 [simultaneous speaking]
20 MR. COOPER: Just like me, Your
21 Honor. Can I have a copy?
22 THE COURT: Yes, you can.
23 MR. NEWCOMB: I have it right here,
24 Your Honor.
25 The State was in a three-day jury

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1 trial, Your Honor, and there are filings in
2 this matter by Mr. Cooper on Thursday, and I
3 compiled these over the weekend.
4 MR. COOPER: The petition has been
5 on the calendar since April 6th. It's April
6 24th.
7 MR. NEWCOMB: Anyway, Your Honor,
8 if I could proceed.
9 THE COURT: Yes.
10 MR. NEWCOMB: Thank you.
11 State versus Culbreath says at the
12 top on page ten of two, "Prosecutor's
13 discretion about whom to prosecute and to
14 what extent they should be prosecuted,
15 however, is vast and to a large degree, not
16 subject to meaningful review. Prosecutor
17 discretion in charging is very broad.
18 Moreover, as the United States Supreme Court
19 has recognized, the prosecutor's discretion
20 goes beyond initial charging decisions."
21 This is the operative language. "A
22 prosecutor exercises considerable discretion
23 in matters such as determination of which
24 person should be targets of investigation,
25 what methods of investigation should be

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1 used, what information will be sought as
2 evidence, which person should be charged
3 with what offenses, what person should be
4 utilized as witnesses, whether to engage in
5 plea bargains and the terms with which they
6 will be established, and whether any
7 individuals should be granted immunity.
8 These decisions, critical to the conduct of
9 the prosecution, are made outside the
10 supervision of a court."
11 The State avers that the
12 presentation of an immunity -- waiver of
13 immunity falls within that --
14 THE COURT: I disagree with you.
15 MR. NEWCOMB: I understand.
16 THE COURT: Totally.
17 MR. NEWCOMB: Okay.
18 THE COURT: Because this statute,
19 the 40-12-104, is very specific about the
20 rights of a citizen to go in front of the
21 grand jury -- in front of the grand jury
22 foreman and two people, two other grand
23 jurors. And then if they determine by a
24 majority vote one way or another, they
25 determine whether or not the private citizen

Page 33 1 has the right to go then in front of the 2 grand jury and testify. 3 Now, what that grand jury does, the 4 grand jury is not an arm necessarily of the 5 court or the attorney general's office. The 6 attorney general's office has great 7 discretion, you're exactly right, in who you 8 prosecute. 9 You know, we had an issue here on 10 another case involving Mr. Cooper where he 11 was able to obtain an indictment. The State 12 comes in in its discretion, absolute 13 discretion, and dismisses that indictment. 14 You know, that's the law. 15 MR. NEWCOMB: Your Honor, can I 16 proceed just for the record? 17 THE COURT: You can, yeah. 18 MR. COOPER: Thank you. 19 MR. NEWCOMB: The next case, Your 20 Honor, I would cite, this case of State 21 versus Penley. State versus Penley, Your 22 Honor, on page 7 of 9. May I approach? 23 THE COURT: Yes. 24 MR. NEWCOMB: Thank you. 25 Says -- talks about the	Page 35 1 in determining whether to prosecute him for 2 what offense." 3 THE COURT: You are correct, sir. 4 MR. NEWCOMB: "So long as the 5 prosecutor has probable cause to believe 6 that the accused committed an offense, and 7 the decision whether or not to prosecute and 8 what charges to file or bring before a grand 9 jury generally rests entirely within his 10 discretion. The function of the grand jury 11 is to determine probable cause. The grand 12 jury may indict an accused for any 13 indictable or presentable offense found to 14 have been committed triable within the 15 county." And therein lies the central 16 issue in this case, Your Honor, wherein the 17 State avers that this petition for which Mr. 18 Cooper has presented to this court is not a 19 triable, indictable offense because it is 20 void of probable cause. 21 THE COURT: That'd be up to the 22 grand jury. 23 MR. NEWCOMB: Well, sir, except the 24 state avers that in Hawk versus -- excuse 25 me, Willis versus Johnson, which if I could
Page 34 1 independent, as the court just observed, the 2 independent constitutional authority of the 3 district attorney general's office in 4 dealing with its matters in front of the 5 grand jury. 6 But Rule 6, and we'll get to that, 7 says, "It's the duty of the district 8 attorney general's office and the grand jury 9 foreman to ferret out crime." And that will 10 bring me down to the ultimate issue, if the 11 court will bear with me just a few minutes. 12 THE COURT: Sure. 13 MR. NEWCOMB: I'll get there. 14 The next case, of course, is State 15 versus Ramsey, on page 5 of 6. 16 State versus Spradlin and Harris 17 having to do with these matters. 18 State versus Johnson. 19 And State versus Aldaba-Arriaga. 20 In all those cases, Your Honor, and 21 I understand the court's view, but the issue 22 on page 1117 in State versus Aldaba-Arriaga, 23 says, "Our Supreme Court has recognized that 24 prior to indictment, the district attorney 25 general has virtually unbridled discretion	Page 36 1 approach, as well as with copies of Rule 6 2 and 40-12-104, if I could, Your Honor. 3 THE COURT: No good. 4 MR. NEWCOMB: Yes, sir. 5 The issue before that, the state 6 avers, Your Honor, is pursuant to Tennessee 7 Rules of Ethics 303 and 308 regarding candor 8 toward the tribunal and regarding the lack 9 of probable cause that the state is aware 10 of. 11 And the state avers that at the 12 time that this alleged petition occurs, that 13 this matter is devoid of probable cause. 14 And so then it becomes an issue 15 that the state is predicting the candor and 16 the integrity of the tribunal, where an 17 individual brings a matter before the grand 18 jury, void a probable cause. 19 I have prepared today, Mr. Cooper 20 mentioned these witnesses. These witnesses 21 are here today to demonstrate that there's 22 absolutely no probable cause to support this 23 application. The state avers that an 24 application not supported by probable cause 25 is not an offense, triable or indictable,

Page 37 1 within the State of Tennessee. 2 And so the grand jury is an 3 independent constitutional body. The 4 district attorney general's office is an 5 independently constitutionally elected 6 office. And the state avers that in 7 presenting Mr. Cooper with the waiver, that 8 it was exercising its authority under the 9 investigative authority as set forth. 10 THE COURT: Well, General, if that 11 is your position, that would completely do 12 away with TCA 40-12-104. It would. 13 MR. NEWCOMB: Could I address that, 14 Your Honor ? 15 THE COURT: Yeah. 16 MR. NEWCOMB: The state avers that 17 all that statute gives a right is to apply. 18 Just to it -- 19 [simultaneous speaking] 20 THE COURT: But it does not say it. 21 MR. NEWCOMB: It does not give a 22 right to appear. He can file all the 23 applications he wishes. 24 THE COURT: He can. 25 MR. NEWCOMB: But the issue about	Page 39 1 to be just like when you give somebody a 2 Miranda waiver. The state avers there's no 3 difference in that. 4 THE COURT: There is nothing in 5 40-12-104, there is no case that I'm aware 6 of that you've shown me. I mean, of course, 7 I just got them here this morning so the 8 court's obviously not had time to read them. 9 But, now, General Newcomb, there is nothing 10 that requires this man in this situation -- 11 whether I agree with him or whether I don't 12 is immaterial. But he's got a right, as 13 every other citizen does, to ask the grand 14 jury foreman and two other grand jurors to 15 hear him and to hear what he's got to say. 16 And then they determine, not the attorney 17 general's office, not the court, nobody 18 else, whether the grand jury will hear him 19 or not. Then let it take its course. 20 MR. NEWCOMB: The state avers, Your 21 Honor, he does not have a right to present 22 testimony. 23 THE COURT: He doesn't have a right 24 to present testimony, but he has a right to 25 appear in front of the grand jury foreman.
Page 38 1 whether to appear is not a right. It's 2 discretionary within Willis versus Johnson. 3 THE COURT: With the grand jury 4 foreman and two -- 5 MR. NEWCOMB: And that's exactly 6 what happened. They voted independently. 7 THE COURT: Now, as I understand 8 it, from what's been filed, they told him to 9 come -- he's filed another application -- 10 MR. NEWCOMB: He has. 11 THE COURT: -- to go back in front 12 of the grand jury. Now, he can do that. 13 MR. NEWCOMB: He can do that. 14 But if he's a target of a potential 15 defendant for potential crimes, there's an 16 attorney general opinion that says you can't 17 keep a potential defendant out, but it 18 doesn't suspend the district attorney 19 general's authority to use investigative 20 techniques, including waiver of your 21 constitution -- 22 THE COURT: That's not an 23 investigative tool. 24 MR. NEWCOMB: Well, that's the 25 state's position, Your Honor. I believe it	Page 40 1 Otherwise, this court and the attorney 2 general's office is saying that the statute 3 40-12-104 is meaningless. The legislature 4 passed it for some reason, sir. 5 MR. NEWCOMB: They passed it -- 6 THE COURT: You're wrong, General 7 Newcomb. You're just flat out wrong. I 8 just don't agree with you on this. 9 MR. NEWCOMB: The state would ask 10 to call its witnesses. 11 THE COURT: No. We're not here -- 12 this, it's up to the grand jury to 13 determine, it's up to those three people to 14 determine whether they think there's enough 15 evidence to go forward, that the grand jury 16 should consider it, and then determine 17 whether there's probable cause. And if they 18 indict, they indict. If they don't, they 19 don't. And then, if they do indict, then 20 the attorney general's office, in my 21 opinion, has the absolute authority and 22 discretion to come in as they did previously 23 and dismiss the case. 24 But the grand jury, the attorney 25 general's office, nor the court can keep

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1 40-12-104 from coming into play. I don't
 2 have any authority -- and Mr. Cooper wants
 3 the court to go tromping through the grand
 4 jury proceedings. The court is not prepared
 5 to do that.
 6 And the grand jury, if they want
 7 to, they can ask the attorney general's
 8 office questions. If they don't want to,
 9 they don't have to.
 10 MR. NEWCOMB: That's right, Your
 11 Honor. The state also would aver that we
 12 were before the grand jury per their written
 13 request. It's part of the file.
 14 With regard to giving advice to the
 15 grand jury, the state avers that that has to
 16 do -- advice is based on facts. You can't
 17 give legal advice if you don't know facts.
 18 If the state is aware that
 19 something is devoid of probable cause, then
 20 it's not indictable or triable.
 21 THE COURT: I disagree with you.
 22 MR. NEWCOMB: The ethics rules do
 23 not -- they apply to the grand jury just
 24 like they do any other entity, is the
 25 state's position.

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1 And I understand the court's
 2 ruling, but for the record, the state has
 3 here today the potential target, one of the
 4 potential targets of Mr. Cooper's petitions,
 5 Mr. Matt Evans.
 6 THE COURT: Yes.
 7 MR. NEWCOMB: We have a witness,
 8 Mr. Alex Johnson. Both those individuals
 9 say that he did not touch Mr. Cooper.
 10 There's video evidence of that and a report
 11 by two police officers.
 12 THE COURT: We try cases every day,
 13 general, where there's a difference of
 14 opinion. But in the grand jury, you don't
 15 hear from everybody. We know that.
 16 MR. NEWCOMB: Unless, of course,
 17 Your Honor, that there's an issue that is
 18 being tried to be put before the grand jury
 19 that's not supported by probable cause.
 20 THE COURT: But again, the grand
 21 jurors, they determine probable cause, not
 22 the attorney general's office and not the
 23 court before indictment.
 24 MR. NEWCOMB: But if it doesn't
 25 have probable cause, it doesn't even get

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1 there, Your Honor. And I understand the
 2 court's ruling.
 3 THE COURT: I don't agree with
 4 that. Because why would you need the grand
 5 jury if you're not looking for probable
 6 cause?
 7 MR. NEWCOMB: The only two people,
 8 Your Honor, that have a right to bring
 9 something before the grand jury is the grand
 10 jury foreman, a grand juror, and the
 11 district attorney general's office.
 12 THE COURT: I disagree with -- oh,
 13 subject to 40-12-104.
 14 MR. NEWCOMB: And Rule 6, Your
 15 Honor. Rule 6, where it says the duties of
 16 the grand jury foreman and the district
 17 attorney general's office, they have the
 18 duty to bring things. They have the right
 19 to bring things. No other person does.
 20 40-12-104 -- and I understand the court's
 21 ruling and understand we disagree, and I'm
 22 trying to be respectful of that.
 23 THE COURT: Well, you better be.
 24 MR. NEWCOMB: Yes, sir.
 25 THE COURT: You are.

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1 MR. NEWCOMB: Yes, sir.
 2 THE COURT: But you're not
 3 listening to me.
 4 MR. NEWCOMB: Well, just for the
 5 record, the state avers, and I know the
 6 court's ruled, that that statute just gives
 7 a right to apply.
 8 THE COURT: Exactly.
 9 MR. NEWCOMB: But you can send in
 10 affidavits, you can do these other things,
 11 but it does not give a right to personally
 12 appear and testify.
 13 THE COURT: It does not give a
 14 right to personally appear before the grand
 15 jury unless by a majority vote, two out of
 16 three grand jurors say that he shall. And
 17 that is not reviewable by a court. Whatever
 18 they decide is decided.
 19 MR. NEWCOMB: And the state avers
 20 that that's exactly what happened, based
 21 upon legal advice sought by the grand jury
 22 from the district attorney's office, when an
 23 individual tries to present something to a
 24 grand jury that is devoid of probable cause.
 25 The other issue, Your Honor, is

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1 there's not just Mr. Cooper here, but it's
 2 just Mr. Evans. Mr. Evans is somebody that
 3 hadn't done anything wrong that can be
 4 targeted by the grand jury.
 5 THE COURT: And, you know, I
 6 understand that. But what you're asking the
 7 court to do, in effect -- and listen, I
 8 don't know anything about this case other
 9 than what you gentlemen have filed here.
 10 But it's up to the grand jury to determine
 11 what is -- what they think is probable
 12 cause. Otherwise so why would we need a
 13 grand jury if the attorney general's office
 14 or the court decides those things? That's
 15 not what the grand jury process is about.
 16 MR. NEWCOMB: But, Your Honor, in
 17 this case, that three person panel met in
 18 secret. Mr. Cooper requested to go ahead
 19 and testify.
 20 THE COURT: Well --
 21 MR. NEWCOMB: They declined.
 22 THE COURT: Well, he can go -- he
 23 can petition again.
 24 MR. NEWCOMB: The state of agrees
 25 that he can, but the state --

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1 THE COURT: Okay, then you agree
 2 with it.
 3 MR. NEWCOMB: Except, I don't
 4 agree, respectfully, I do not agree with the
 5 court, with most respect --
 6 THE COURT: You know what you can
 7 do with that? You can appeal it. That's
 8 what the Court of Criminal Appeals is for.
 9 And, you know, I've been reversed before, so
 10 that don't scare me or it don't make me mad.
 11 But General Newcomb, the court has
 12 held, and I do hope and I do find that Mr.
 13 Cooper does not have to execute a waiver of
 14 immunity in order to ask the three grand
 15 jurors whether or not to hear his testimony.
 16 He's not being compelled to testify;
 17 therefore, his immunity is not impacted.
 18 Yes, it's right, Mr. Cooper, if a
 19 grand jury, at some point -- a grand jury
 20 were to determine that any witness lied, and
 21 I'm not saying you are, I'm not saying that,
 22 Mr. Cooper. But that's up to the grand
 23 jury.
 24 And if the attorney general wants
 25 to present witnesses about those issues, you

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1 can do that. That's what the law is.
 2 MR. COOPER: Your Honor, may I
 3 respond?
 4 THE COURT: Just a second. I'm on
 5 a roll here.
 6 MR. COOPER: Thank you, sir.
 7 MR. NEWCOMB: I think I've got my
 8 proffer, Your Honor. Okay. Just for the
 9 record.
 10 THE COURT: Yes, sir.
 11 MR. NEWCOMB: Matt Evans here. No
 12 contact. Did not touch Mr. Cooper. Alex
 13 Johnson here. No contact. He did not touch
 14 Mr. Cooper. Law enforcement officers
 15 investigated, found no probable cause, did
 16 not bring charges against Mr. Cooper. And
 17 Mr. Charlie Garren that would have the video
 18 that corroborates all that from the chancery
 19 courtroom on August 22nd, 2022.
 20 The state avers that in review of
 21 the totality of the available investigative
 22 evidence, there is no probable cause and as
 23 such is not triable and indictable in the
 24 State of Tennessee.
 25 THE COURT: And do you know what

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1 you can do with that? You can present them
 2 to the grand jury. You can present your
 3 witnesses to the grand jury, General
 4 Newcomb.
 5 MR. NEWCOMB: Yes, sir.
 6 THE COURT: You can do that.
 7 That's done all the time.
 8 You're just asking the court to
 9 step in and block the application of TCA
 10 40-12-104. And I can't and will not be a
 11 party to that. I like everybody. I'm like
 12 Riley King was, our former county
 13 commissioner. I love everybody.
 14 But the point here is a question of
 15 law. And whether I agree with it or whether
 16 I don't, I've got to try my very best to
 17 enforce it. And as long as I sit here, and
 18 I may not sit here long, but as long as I
 19 do, I'm going to do that.
 20 MR. NEWCOMB: Your Honor, again,
 21 for the record, I respect the court --
 22 THE COURT: You know that.
 23 MR. NEWCOMB: But the state's not
 24 asking the court to do that. The state is
 25 asking the court to --

Page 49 1 THE COURT: I think the effect of 2 what you're doing is that. 3 MR. NEWCOMB: The state -- I 4 understand, Your Honor. I don't mean to 5 interrupt the court. 6 THE COURT: No, you're fine. 7 MR. NEWCOMB: The state's asking 8 the court interpret the statute as it avers 9 it to be under Willis versus Johnson, that 10 he only has the right to apply and a grand 11 jury person, whether it be the three-person 12 panel or anybody else or the whole grand 13 jury, can decline to hear his personal 14 testimony. 15 THE COURT: Have I not been saying 16 that for the last 15 or 20 minutes? 17 MR. NEWCOMB: Well, Your Honor, I 18 think, as I understood the court's ruling is 19 that the court has ruled that he has a right 20 to personally appear upon his application. 21 THE COURT: General Newcomb, this 22 is not really complicated. I've said, and 23 I'm going to say it one last time, I'm done 24 with this issue. 25 MR. NEWCOMB: Yes, sir.	Page 51 1 what the court's just ruled on. 2 MR. COOPER: No, Your Honor . 3 THE COURT: I don't. 4 MR. NEWCOMB: Your Honor, if I 5 could, before I yield, could I file some 6 additional authorities for the record, 7 please? 8 THE COURT: Yes, sir. 9 MR. NEWCOMB: All right. 10 THE COURT: But again, the court's 11 not seen them. 12 MR. NEWCOMB: I understand, Your 13 Honor. 14 THE COURT: Can't read them by 15 osmosis. 16 MR. NEWCOMB: I understand, Your 17 Honor. 18 The only other filing I would file 19 is attorney general opinion 95-106, if I 20 could approach. 21 THE COURT: Yes, sir. 22 MR. NEWCOMB: If I can have just a 23 moment, please, Your Honor. 24 THE COURT: Yes, sir. 25 MR. COOPER: Mr. Newcomb, do you
Page 50 1 THE COURT: 40-12-104 says what it 2 says. Any citizen has the right, has the 3 right to ask the grand jury foreman and two 4 grand jurors of his choice, his or her 5 choice, to listen to what they wish to 6 present to the grand jury. Then those three 7 people hear that, and then they discuss it. 8 And if they want to ask your advice, they 9 can ask your advice. That's up to them. 10 The attorney general's advice, office's 11 advice. And then they vote. And it's 12 final. It's not reviewable by a court. 13 It's not reviewable by the attorney 14 general's office. And if they choose to 15 hear witnesses on the other side, they can 16 do that. But that's it. I'm done. I'm 17 done. I may be dead wrong, but I think it's 18 one of the simplest matters this court has 19 heard in a long time. Pretty clear. 20 And look, I mean, Mr. Cooper, he 21 says he has issues with the judges and the 22 whole system here, and that's fine. He may 23 not like any of us, but the law is the law, 24 and that's the way I see it. 25 Mr. Cooper, I don't want to rehash	Page 52 1 have a copy? 2 MR. NEWCOMB: I do, Mr. Cooper. 3 Just a minute, please. 4 The court's referenced it, but the 5 state would, of course -- 6 THE COURT: Yes, it's interesting 7 here the state attorney general in this 8 opinion, looks like opinion 95-106. It's 9 amazing. It says here -- wait just a 10 minute. Yeah. In the first part of the 11 analysis, it says, "The grand jury in 12 Tennessee is considered to be an independent 13 legal body. The grand jury is not an agency 14 of the districts attorney or of the court. 15 Under our system, it is an agency of the 16 government and may act independently of the 17 court and districts attorney." 18 MR. NEWCOMB: Yes, sir. 19 THE COURT: It also goes on to say 20 that the grand jury should not receive legal 21 advice from the judge. 22 MR. NEWCOMB: I think, Your Honor, 23 what it says, it says that the grand jury is 24 only receiving legal advice from the 25 district attorney general's office.

Page 53 1 THE COURT: And again, that's just 2 the -- 3 MR. NEWCOMB: Yes, sir. 4 THE COURT: Yeah, I don't disagree 5 with that at all, General Newcomb. 6 MR. NEWCOMB: But the issue is you 7 can't give legal advice without knowing the 8 facts, and the state avers that it's not 9 just 40-12-104 that impacts us. 10 THE COURT: I don't think the 11 attorney general's office has a right to 12 impede the application of anybody to apply 13 under 40-12-104. 14 MR. NEWCOMB: Your Honor, I would 15 agree that we can't stop anybody from making 16 application. 17 THE COURT: That's right. 18 MR. NEWCOMB: But the procedural 19 issue is the issue. 20 THE COURT: I'm done. 21 MR. NEWCOMB: Yes, sir. 22 MR. COOPER: Your Honor, thank you 23 for the opportunity to be heard again. I 24 only intend to reply to a few of the 25 arguments for Mr. Newcomb briefly.	Page 55 1 presentation of that indictment to this 2 court. 3 For example, the court referenced 4 earlier a case involving two other 5 individuals for which two grand juries 6 returned about eight indictments against 7 them. Mr. Dunn has a really big stick. He 8 has the ability to choose to prosecute cases 9 he wants to and dismiss ones he doesn't. 10 THE COURT: That's correct. 11 MR. COOPER: He also has duties in 12 the platform that he runs for office on that 13 says that he supports victims rights. Well, 14 when an individual is a victim of a crime, 15 you think that somebody from the DA's office 16 would contact them to talk about the crime, 17 to talk about assistance that's supposed to 18 be provided, or even respond to emails about 19 conflicts of court hearings. Instead, they 20 rush something in under the court's nose and 21 get it dismissed. That's another matter 22 that we'll get into later -- 23 THE COURT: No, we're not. 24 MR. COOPER: Not today. Not today. 25 The issue is is that Mr. Newcomb opened the
Page 54 1 THE COURT: You know, there's an 2 old saying when a judge has ruled with you, 3 you probably need to -- 4 MR. COOPER: Yeah, but violating an 5 individual's civil rights in this county on 6 March 27th, as Mr. Newcomb and Mr. Dunn and 7 his staff did, generates a civil rights 8 lawsuit in federal court. 9 THE COURT: File it. 10 MR. COOPER: And that will be 11 filed. 12 However, the issues that are still 13 before the court involve some things that 14 Mr. Newcomb's taken out of the worm can, if 15 you will. 16 For example, and this is a really 17 relevant issue for how these applications 18 are to be heard in this county. I've asked 19 the clerk of court, Ms. Atchley, to provide 20 all records involving how the grand jury 21 proceedings are conducted in Seiver County. 22 That includes, without limitation, the 23 application of a private citizen to appear 24 under 40-12-104, all the way down to the 25 conclusion of an indictment and the	Page 56 1 can of worms. That when an applicant 2 submits an application to testify, they do 3 the research. They establish the probable 4 cause. They come back and conclude whether 5 or not a crime has occurred. They speak 6 with law enforcement. They come back and 7 get videos from the courthouse. And in the 8 end, before the applicant ever appears to 9 testify, they have their case. 10 Well, that's one method to avoid 11 getting a crime indicted, right? That's one 12 of the processes to providing consultation 13 to the grand jury of legal advice. No, it's 14 facts of a case. It's whether a contact 15 took place or not. It's whether a crime 16 took place or not. 17 The only legal advice should be 18 under the statute of what the crime is 19 that's accused in the application for the 20 indictment, not legal advice about probable 21 cause or anything else. 22 And Mr. Dunn has exercised his big 23 stick authority before. He has wielded that 24 stick and dismissed charges that the grand 25 jury's indicted, which completely undermines

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1 the entire integrity and value of the grand
2 jury process. Why bother presenting charges
3 that the district attorney general gets to
4 decide? We'll prosecute these maybe by race
5 and religion.

6 THE COURT: Just to interrupt you
7 just a second.

8 MR. COOPER: Yes, Your Honor.

9 THE COURT: One of the reasons
10 being, and I'm not talking about any cases
11 involving you, I have no idea about it.

12 MR. COOPER: Understood, Your
13 Honor.

14 THE COURT: But, for example, the
15 grand jury is a one-sided process. A
16 defendant is not present in the grand jury.
17 The defendant's attorney is not present in
18 the grand jury. All they hear from
19 generally is the prosecution. And so that's
20 the reason that an indictment in and of
21 itself means nothing other than you've been
22 officially accused of a crime.

23 And so then, when the other side
24 has the opportunity to get an attorney and
25 so forth, and then they start talking about

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1 the cases, and a defense attorney or --
2 tells the state what their evidence may be,
3 then they start talking about it and the
4 state may realize they don't have a case and
5 dismiss it. Or they may compromise it in
6 some way. So, Mr. Cooper, that's the way
7 the process works.

8 MR. COOPER: After an indictment.

9 THE COURT: Yeah. Well, yeah.

10 MR. COOPER: Not before an
11 indictment.

12 THE COURT: The state chooses, if
13 they -- if officers come to them, for
14 example, Mr. Cooper, that want to present
15 cases to the grand jury, the state doesn't
16 have to do that. They don't have to do
17 that.

18 MR. COOPER: I understand. That's
19 why there's 40-12-104.

20 THE COURT: Exactly.

21 MR. COOPER: The point I'm making,
22 Your Honor, and again, with all due respect
23 to the court, I know I can be animated, but
24 this is a hot topic issue.

25 Mr. Newcomb wants the court to

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1 understand, and he has opened that can today
2 that's going to require further judicial
3 review, that when an application is made,
4 the DA's office has the unwielding authority
5 to conduct its own investigation to
6 determine probable cause, and to come in and
7 disrupt the grand jury process from getting
8 an indictment. Normally, criminal charges
9 are brought, the grand jury hears the
10 evidence from witnesses, including law
11 enforcement victims and so forth, and then a
12 decision is made to return an indictment or
13 not.

14 Not in this case. In this case, an
15 applicant submits an application to testify,
16 and the grand jury is already running, which
17 is why they've corrupted the process from
18 indictments before, because they do their
19 own homework. They come to their own
20 conclusions, falsely or otherwise, and then
21 make a final decision to disrupt an
22 indictment from ever being returned. It
23 needs to be in the record today. And I did
24 not introduce an individual's name.

25 Mr. Newcomb has said Matt Evans.

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1 In the process of disclosing Matt Evans to
2 this court, Mr. Newcomb wants to protect Mr.
3 Evans from being indicted. That's what this
4 is about. And if you obstruct the grand
5 jury process by bending the 40-12-104 or by
6 finding some obscure case law, I mean, this
7 is a weekend's worth of work. It's unfairly
8 reasonable.

9 THE COURT: Are you disagreeing
10 with what the court said about 40-12-104?

11 MR. COOPER: No, Your Honor, I
12 appreciate the court's ruling.

13 What I'm saying is this is a bigger
14 issue for this court to pay attention to in
15 the future, in other petitions that will be
16 brought because the DA's office is abusing
17 its authority and discretion under the code.
18 And I just happen to be one individual
19 through the process that stuck the cog in
20 the wheel enough to disrupt it. And that's
21 what this is about.

22 This requires more attention from
23 the court and what happens in this county.
24 I'll bring that in future petitions.

25 For today's ruling, the only issue

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1 I ask that the court has not addressed is if
 2 I proceed with indictments against Mr.
 3 Newcomb for his violation of three statutes.
 4 How does the grand jury consult the district
 5 attorney general's office for guidance in
 6 making its determination under 40-12-104
 7 (c)?
 8 THE COURT: Well, I'll cross that
 9 bridge when I have to.
 10 MR. COOPER: I ask for the court's
 11 availability on May 1st then.
 12 THE COURT: Well, I don't know if
 13 I'm the judge here on May 1st or not.
 14 MR. COOPER: You are, Your Honor.
 15 THE COURT: Well, if I'm around.
 16 But you're going to have to file something.
 17 You just can't drop in.
 18 MR. COOPER: Yes, Your Honor.
 19 THE COURT: You just can't drop in.
 20 You can't send me a letter. File a pleading
 21 in the court.
 22 MR. COOPER: I will, Your Honor.
 23 Thank you.
 24 THE COURT: That's the way it
 25 works. That's the way lawyers do it.

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1 And you seem to be very talented.
 2 And again, Mr. Cooper, I want you to
 3 understand, yes, you filed a complaint
 4 against me, and that's all well and good.
 5 But I hold nothing against you --
 6 MR. COOPER: Thank you, Your Honor.
 7 THE COURT: -- at all. And I've
 8 just got to do my job, and I'm going to do
 9 it the best I know it. And that's the way
 10 it is.
 11 MR. COOPER: I appreciate the
 12 court's time. Thank you.
 13 THE COURT: Now, do you gentlemen
 14 want me to actually do an order, or I can
 15 have the court reporter, the state's court
 16 reporter -- you can have your court reporter
 17 type up, Mr. Cooper, what was said.
 18 MR. COOPER: Your Honor, I'd be
 19 happy --
 20 THE COURT: Okay. In order for it
 21 to be an official document, I guess the
 22 state court reporter would need to do it, if
 23 that's. And so we'll do it that way.
 24 MR. COOPER: I stipulate, Your
 25 Honor.

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1 THE COURT: And then obviously,
 2 you'd be entitled to a copy.
 3 MR. COOPER: Thank you, Your Honor.
 4 Are we concluded?
 5 THE COURT: I hope so. Yes, sir.
 6 MR. COOPER: I appreciate your
 7 time. Thank you.
 8 (End of Proceedings at 10:13 AM)
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C E R T I F I C A T E

1
 2 STATE OF TENNESSEE:
 3 COUNTY OF KNOX:
 4
 5 I, Jeffrey D. Rusk, Registered
 6 Professional Reporter and Notary Public, do hereby
 7 certify that the foregoing proceedings were captured
 8 digitally and were prepared under my supervision
 9 using computer-aided transcription and constitute a
 10 true and accurate record of said proceedings, to the
 11 best of my ability.
 12 I further certify that I am not an
 13 attorney or relative of any attorney or counsel
 14 connected with the action, nor financially
 15 interested in the action.
 16 Witness my hand and official seal
 17 this the 24th day of April, 2023.
 18
 19
 20
 21
 22
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 24
 25



Jeffrey D. Rusk

Jeffrey D. Rusk, RPR, CLVS
 Notary Public at Large
 My Commission Expires: 4/29/2026
 TCRB License No. 212

CERTIFICATE OF SERVICE

I hereby certify that a true and exact *courtesy copy* of the foregoing document has been forwarded on this day to the following recipients and in the manner indicated for each:

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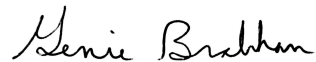
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on this, the 12th day of July, 2023.



GENIE BRABHAM