



**Hennepin County Attorney Mike Freeman's Statement  
about decision not to use a grand jury in Jamar Clark case  
March 16, 2016**

The question of whether to use a grand jury in Hennepin County in the tragic Jamar Clark case has been richly debated both in the Hennepin County Attorney's Office and throughout the community. In Minnesota, state statutes require use of grand juries in cases of first-degree pre-meditated homicide and several other very serious crimes for which the potential sentence may be life in prison. The use of the grand jury in all other cases is up to the discretion of each individual county attorney.

In Hennepin County, and throughout Minnesota, in virtually every previous police shooting case resulting in death, a grand jury has been convened. Moreover, in most jurisdictions throughout the U.S., grand juries have also served in these cases, although there is a growing discussion that grand juries may no longer serve the present evolving standards of justice, accountability and transparency.

So, what is a grand jury and what does it do? At least in Minnesota, a grand jury consists of 23 randomly selected, diverse adults who are chosen to decide in private whether or not, in a particular case, there exists probable cause to indict, or charge, an individual for a crime.

In essence, the grand jury is a fact finder. It meets in private with evidence presented to it through witnesses questioned both by the prosecutor and then independently by grand jury members. The grand jury also reviews documents and videos. Rules of law are presented to the grand jury by the prosecutor who provides a summary of what legal elements must be present to indict a person for a crime.

Then the grand jury deliberates in private without the prosecutor present to decide whether the evidence presented is sufficient to indict someone for a crime. If the grand jury decides yes, then the grand jury will issue an indictment and the case will thereafter be prosecuted in public, by the county attorney, as in any other case. If the grand jury decides there is insufficient evidence to warrant an indictment, it will issue a no bill and the case is over.

By tradition, this office has used the grand jury in a belief that 23 diverse opinions from the community will more accurately evaluate what the evidence really shows and whether charges should be brought. Supporters maintain that grand jurors might be less impacted by non-legal considerations in making this most difficult charging decision: whether or not to charge a police officer for criminal misuse of force.

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Others dislike the grand jury process because under law and practice, its proceedings are essentially private and the basis for the grand jury's decision is confidential. Also, names of the grand jury members are not made public and, therefore, there is a perceived lack of accountability. Secrecy, lack of transparency and no direct accountability strikes us as very problematic in a democratic society.

To use or not use a grand jury in police shooting cases is a hard decision for me. We have used grand juries in Hennepin County for at least the last 40 years in police shooting cases. On one hand, to have 23 people make a factual decision versus just the prosecutor and his team has appeal. After all, the law that applies is exactly the same whether the facts are applied to that law by a grand jury or a prosecutor. On the other hand, our society, and this prosecutor, believes accountability and transparency are critical concepts for a just and healthy democracy.

I began my personal review of whether or not to continue using grand juries in police shooting cases some 16 months ago. Along with prosecutors here in Minnesota, and throughout America, I have sought to closely examine the historical roots of grand juries and whether its procedures could be modified to resolve some of the limitations in its use.

In addition, I have reviewed every step and procedure used in investigating and evaluating the evidence in police shooting cases. First, I believe community confidence is enhanced in police shooting cases by insisting that police departments not investigate police shootings by their own officers. After a long struggle and with the help of many, including the chiefs of police in both Minneapolis and St. Paul, we have ended that unwise practice here in Minnesota. Police use of deadly force in the Jamar Clark case was investigated by the Minnesota Bureau of Criminal Apprehension (BCA), an independent law enforcement organization. I believe, and strongly support, that in all future cases where police use deadly force, it will be investigated by an independent law enforcement agency.

Second, I strengthened the prosecutor's involvement in police shooting investigations. Normally, prosecutors wait for the police to present a case before getting involved. In these most sensitive cases, I decided to assign a veteran prosecutor to assist in the police investigation in the Clark case from day one. This should enhance the quality of the entire process and include a lawyer's perspective from the beginning of the investigation.

I have also spent many hours trying to develop a hybrid grand jury system where we could retain the values of the grand jury process but make it more transparent so at least what happens is better understood and the facts presented to the grand jury can be more readily made available in a form useful to the public. We had tentatively set a news conference to announce the new hybrid system for the Monday after Thanksgiving. As you know, the fatal shooting of Jamar Clark occurred on November 15 and it seemed inappropriate to talk about changes to the grand jury system at that point.

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The ensuing months have given me more time to think about the grand jury. As an elected official, I also took that time to meet with more people and listen to their concerns. I concluded that the accountability and transparency limitations of a grand jury are too high a hurdle to overcome. So, at this point in time, and in a democracy where we continually strive to make our systems fairer, more just and more accountable, we in Hennepin County will not use the grand jury in the Jamar Clark case.

I will make the factual determination whether there is sufficient evidence to support a criminal charge against the police officers in the tragic death of Jamar Clark. I will make that determination with the excellent assistance of senior attorneys in our office and the fine work of law enforcement, most notably, the BCA and FBI.

This is my job and I will do it as fairly as I can. To repeat, there will not be grand jury proceedings in the Jamar Clark case.

I am making this decision only for Hennepin County. As I mentioned earlier, there are strong reasons to use a grand jury in some cases. And other communities may feel the use of the grand jury in police shooting cases is appropriate. The authority to make those decisions lies with each elected county attorney. For me, grand juries should no longer be used in police shooting cases in Hennepin County.

In conclusion, everyone insists, and I agree, that this investigation and review of all evidence be as thorough and professional as possible. This process, undertaken with the help of the U.S. Attorney, is not yet complete. Accordingly, no charging decision in the Clark case will be announced today. We hope to reach this decision in the near future and I will share it with you soon thereafter.

As this process is ongoing, it is premature and inappropriate for me to answer any questions on the Jamar Clark case at this time.

Thank you.

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