

# Breonna's Law a Start, but Jefferson Circuit Court Should Change Warrant Process

*Ted Shouse*

The passage of Breonna's Law eliminates no-knock warrants. That's a step in the right direction, but it does not address the deeper, systemic problems involving the issue of how the police get search warrants.

The United States Constitution requires the police to obtain a search warrant to enter your home without your permission and look for something. To get a warrant, the police have to appear before a neutral judge and swear, under oath, to facts that would lead the judge to believe that a) probable cause exists that a crime has been committed and b) evidence of that crime is in your home. The judge is supposed to read the application and ask questions to determine if probable cause exists. That's what the law requires for a judge to sign a search warrant.

In 21 years as a criminal defense attorney in Jefferson County I've seen this procedure dozens of times. Here's what that looks like: The police officers, always in plain clothes, appear unannounced in a courtroom. They linger until there is a break in the court's business. When a break occurs, they approach the judge and white noise is turned on to make their conversation inaudible to anyone else in the courtroom. A casual conversation happens, and the warrant is invariably signed.

The judge is not randomly assigned; the police can pick whichever judge they want. Believe me, if I could pick the judge in my cases, I would. The conversation between the police and the judge is not recorded. Nor is there a record of how these conversations came to happen. Sometimes it appears a phone call has been made beforehand, but often it seems the officers appear unannounced.

Compare this procedure to how felony indictments are handled in Jefferson County. The case is presented to a grand jury. This presentation happens in secret but an audio recording is made. That grand jury tape is made available to the defense lawyer almost immediately. The indictment, a physical piece of paper laying out the charges, is presented to a judge in open court and the judge (or the clerk) spins a drum and draws out a ball at random. The number on the ball—between one and thirteen—determines which division of circuit court the case is assigned to. The judge is selected at random.

Grand jury proceedings are recorded so the defendant knows what evidence was presented against him or her. This transparency allows a defendant to address the specific allegations and ensures nothing improper has occurred. It was the existence of the grand jury tape that led directly to the charges being dismissed against Kenneth Walker, Breonna Taylor's boyfriend.

The *Courier Journal* reported that the judge who issued the no-knock warrant in Breonna Taylor's case signed it and four others in 12 minutes. I could not read five warrant applications in 12 minutes—much less ask questions about them and feel comfortable signing my name to each one. A recording of those 12 minutes could clear up any ambiguity about what happened.

Transparency needs to be the standard. Jefferson Circuit Court should change the warrant application process. Judges should be randomly assigned to hear warrant applications, as they are randomly assigned after indictments are returned. The judge's conversation regarding the warrant should be recorded. A copy of that recording should be made available to the defense lawyer as soon as possible.

Under the current system, no one knows what really goes on when the police get a warrant to search your home. It is past time for that to change.

*This article first appeared in The Courier Journal on June 22, 2020. It is reprinted with permission from Ted Shouse.*

*Ted Shouse has been a criminal defense lawyer for 21 years. ■*

