Cop was foreman of grand jury in cop killing

By Lisa Falkenberg

We can’t hear his voice as he browbeats the mother of three within the secret confines of the grand jury room. We can’t see his face as he dogs her to stop supporting her boyfriend’s alibi in a cop-killing case.

But we know when the grand jury foreman is talking. We know because the 146-page transcript notes it in all capital letters. And we know by his words.

He’s the one who calls out to the Harris County prosecutor with the familiarity of a guy asking a buddy to pass a beer, “Hey Dan, what are the punishments for perjury and aggravated perjury?”

He’s the one who tells the 27-year-old witness, Ericka Dockery, that if she perjures herself, “then you know the kids are going to be taken by Child Protective Services, and you’re going to the penitentiary and you won’t see your kids for a long time.”

He’s the one who tries to get Dockery to subscribe to the implausible theory that it was someone else - not her boyfriend, Alfred Dewayne Brown - sleeping on her couch just before the homicide at a check-cashing store, even though she insisted again and again she knew it was Brown by his build, his tennis shoes and the color of the shirt she bought him.

Understandingly, the cold-blooded killing of a police officer rouses strong emotions. Dockery was questioned only 18 days after Charles R. Clark, a veteran Houston police officer, was gunned down in April of 2003 trying to stop a burglary at a check-cashing store. Clark was 45, on the brink of retirement, and married. Fellow officers had worked throughout the night to hunt down his killer. The loss was fresh.

But if the foreman seems a little too passionate to be impartial, a little too invested to fairly lead a grand jury investigating an officer’s death, maybe it’s because he was.

The foreman, records reveal, was himself a veteran officer with the Houston Police Department.

Records obtained through a Texas Public Information Act request show that senior police officer James Koters, sworn in in July of 1972, led an initial investigation into the death of his own colleague.

A confidential grand jury record released by state district Judge Denise Collins shows that Koters identified his occupation in 2003 as “Retired-Houston Police Officer.” But police and city payroll records confirm that Koters was an active-duty officer in HPD’s auto theft division until his retirement in March 2008.

Deck was stacked

Technically, Koters is still on the city payroll today, receiving compensation for time he accrued as an officer. The date discrepancy is not necessarily Koters’ fault, as his occupation may have been updated in a subsequent grand jury service.

Regardless, Dockery didn’t stand a chance against a deck that stacked.

The blatant conflict is stunning even in a county known for its cozy, pick-a-pal grand jury system stocked with police- and prosecution-friendly elites. Any naïve notion that the grand jury would act as a check on overzealous prosecution withered when Koters declined to recuse himself.

“I would personally recuse myself,” HPD Chief Charles McClelland said Thursday when I asked what he’d do in a similar situation, “because of just the air or the perception of what the community may feel. But that’s me, personally.”

Judge Collins, who impaneled the grand jury, seems as disturbed as anybody at reports of the harshness with which grand jurors interrogated Dockery.

“It’s terrible; it’s terrible,” the judge told me. “That shouldn’t have happened. I hope that was an aberration. No, grand jurors do not work for the state.”

Still, she stands by her decision to appoint a law enforcement officer to the body, noting that she also appoints defense attorneys.

“I just don’t think you should just eliminate people because of what they do,” Collins said. “They’re a citizen, as well.”
I don’t disagree with her on that. And I also don’t blame her for Koteras’ role in Brown’s case. The judge had no direct oversight over which cases he handled or how he handled them. She isn’t the one who assigned a grand jury led by a cop to a cop-killing case.

That was a decision by Dan Rizzo, former Harris County assistant district attorney, who served as lead prosecutor.

His choice of Koteras “would scream conflict of interest to nearly all reasonable people,” says University of Houston law professor David R. Dow. “The DA’s office is full of reasonable people. So the only logical conclusion is that they just didn’t care about this conflict.”

When I asked Rizzo about the conflict, he drew a blank.

“It’s one of those things that I just don’t remember,” he said. But he added: “That alone would not cause me to say a grand jury was not an objective grand jury.”

Rizzo, now retired, was a seasoned prosecutor in 2003. He had easy access to the same type of form I obtained in which Koteras listed his occupation. He had to have known about the conflict. And in truth, he would have welcomed the advantage.

Not that he needed it over a group of largely black suspects from a bad part of town. Dockery worked as a home health aide and made Subway sandwiches at night. She had no one to advise her with the grand jury. Lawyers aren’t allowed inside, but she didn’t even have one waiting in the hall.

Testimony sealed case

Rizzo’s initial selection of Koteras’ grand jury worked out well for his case, although it was another grand jury that eventually indicted Brown for capital murder. After the initial group threatened Dockery, she changed her story. She was charged with perjury anyway, for good measure, locked up away from her children until she agreed to become the prosecution’s key witness against Brown.

Her testimony helped seal Brown’s conviction and death sentence in 2005. That could have been the end of the story if a phone record supporting Brown’s alibi that he was at Dockery’s apartment around the time of the murder hadn’t turned up last year in a homicide detective’s garage. The district attorney’s office and the trial judge quickly agreed to a new trial, but the Texas Criminal Court of Appeals has yet to rule on the case.

Koteras has not responded to my attempts to reach him. I haven’t been able to ask him why he didn’t recuse himself from the proceeding and allow the rest of the quorum to hear Brown’s case.

Three other grand jurors who served on the 2003 panel said their faded memories didn’t recall any undue pressure on Dockery, or any perceived bias from the police officer acting as foreman.

“We talked about it and all,” grand juror MaryAnna Montalbano said about Koteras’ occupation. “If it affected him and he served anyway, that’s not good.” But she didn’t recall him acting unfairly.

Another grand juror, Richard Alan Ogle, who teaches writing at UH-Downtown, said having a police officer on a grand jury “probably does influence some cases.” But whether it had an impact on this one, he couldn’t remember.

Ogle remembered feeling that Dockery’s testimony “didn’t sound right” and that “her body language, the way she talked, some inconsistencies in what she said” raised suspicions.

Justice wasn’t reason

Most telling, though, was my interview with grand juror Randy Russell, a recent president of the 100 Club, the nonprofit that helps support dependents of peace officers and firefighters who die in the line of duty.

When I started describing the case to jog his memory, Russell insisted I had the wrong guy.

“It definitely wasn’t me. And I’ll tell you why,” he said. “We had an HPD sergeant (sic) who was the foreman of our panel and we did not hear any cases involving police officers.”

I read him the names of the other grand jurors, including Koteras’, and it all started coming back. He then assured me that, despite the fact that an officer was at the helm, the panel was independent and “it wasn’t a rubber stamp kind of thing.”

Still, one thing continued to stump him.

“I don’t know why we heard that case,” he said.

I don’t know why, either. But I have an idea. And the reason wasn’t justice. It was the furthest thing from it.

In addition to intimidation, threats and imprisonment, a grand jury led by a cop was another powerful weapon for a prosecutor determined to get justice for a fallen officer. But it was a blunt instrument used against a person who couldn’t fight back.