



## Grand juries: Gatekeepers or open doors?

Published: Sunday, November 21, 2010, 5:10 AM Updated: Monday, November 22, 2010, 4:00 PM



**John Caniglia, The Plain Dealer**



[View full size](#)

Marvin Fong, The Plain Dealer

Jose Rodriguez services some of his tow trucks in this 2008 photo.

*Third of five parts*

---

With **Amanda Garrett**

Seven minutes ruined **Jose Rodriguez's** life.

That's about how long a Cleveland police detective needed to persuade a grand jury to indict Rodriguez in 2006. A judge later cleared the businessman of the charges, but the damage was done.

He lost his towing company. He lost his reputation.

And Rodriguez, who was never in trouble before, lost his faith in the justice system.

All it took was seven minutes.

The case highlights one of the most overlooked parts of the Cuyahoga County justice system: the grand jury.

Grand juries indict most suspects in less time than it takes to brew a pot of coffee. Some grand jury forepersons have complained for years about the churning of cases in rooms controlled by prosecutors.

In recent years, grand juries in Cuyahoga County have delivered about 14,000 indictments annually. Prosecutors present as many as 40 cases a day to grand juries, and the panels determine whether evidence exists that a crime was committed and whether a suspect should be charged.

It's a system that allows weak cases to creep into courtrooms, critics say. Some of those cases end up as judgments of acquittal, where judges — like the one who handled Rodriguez's case — throw out all charges, or nearly all of them, because of a lack of evidence. The critics stress that the secret panel, initially created as a shield to protect the innocent, is no longer a filter.

It's a sieve.

And it's unbalanced, critics say. If a grand jury declines to indict someone, prosecutors can return to present additional evidence to persuade grand jurors to issue charges. But prosecutors acknowledge that if they learn they have presented erroneous information to a grand jury in obtaining an indictment, they rarely return to the grand jury to correct the error and re-present the case with accurate information.

That's what happened in the case of **a Cleveland woman who was charged in connection with a neighborhood fight**. A detective gave the grand jury erroneous information. When prosecutors learned the woman couldn't have taken part in the fight because she was in another county, they didn't drop the charges or go back to a grand jury with correct information.

Instead, they narrowed their theory of how the woman was involved and still took her to trial on the indictment handed up by the grand jury based on the misstatements. Cuyahoga County Prosecutor Bill Mason's first assistant, Michael O'Malley, said the key element of the detective's testimony was correct, that the woman instigated the brawl by threatening the children earlier in the day. She may not have been there, as the detective said, but she did set off the events, O'Malley said.

### Prosecutors can correct errors -- but do they?

Prosecutors said that if they find unintentional errors in grand jury testimony, they can amend the charges to "account for the facts as we know them," said Mason's criminal chief, Jerry Dowling.

Yet when asked how often prosecutors go back to a grand jury to correct errors, prosecutors cited one case:



O'Malley said a police officer once testified and later realized he inadvertently provided some misinformation. The officer notified prosecutors and prosecutors put the officer back in front of the same grand jury the following day to correct his testimony.

The issues have caused some legal experts to ask: Is there a better way than the grand jury?

"The grand jury has also come under increasing criticism for being a mere 'rubber stamp' for the prosecution without adequate procedural safeguards," **the American Bar Association said in a letter to Congress in 2000**. "Critics argue that the grand jury has largely lost its historic role as an independent bulwark protecting citizens from unfounded accusations by the government. News articles have documented numerous instances of abuses of the grand jury's broad investigative powers."

### Presumed Guilty: Prosecutions without evidence

*A Plain Dealer special report*

- **Part 1: Bill Mason's office went after hundreds of people with little or no evidence**
- **Part 2: Cuyahoga County judges vary widely in throwing out cases for lack of evidence**
- **Part 3: Grand juries: Gatekeepers or open doors?**
- **Part 4:  Renaldo Payne: 'This was all over \$20'**
- **Part 5:  Charice Gilmore: 'That's kind of a fatal problem'**
- **Profiles: 13 more people caught up in Rule 29 cases**

### Full index of this project

"The grand jury has not turned out to be the scrutinous process that the Founding Fathers intended it to be," said Dennis Butler, a defense attorney in Cleveland.

Mason disagrees. Every year, prosecutors reject 600 to 750 weak cases, returning them to police departments for further investigation or with a suggestion to seek misdemeanor charges in municipal courts.

Grand juries weed out about 400 more cases a year, refusing to hand up indictments.

Mason stressed that for every case tossed by a judge for lack of evidence — 364 cases in the past 10 years — his office and the grand jury throw out scores more. He said the screening process starts long before the grand jury ever hears a witness.

It begins when patrol officers and detectives meet with supervisors to determine whether to bring suspected crimes to prosecutors, he said. City prosecutors review files, as well.

From there, the cases are transferred to Mason's office, where grand jury prosecutors go over them and sometimes meet with their bosses to discuss them.

Jay Gallagher, a grand jury prosecutor for Mason, said he would not indict a suspect "unless I believed that I would be able to convince 12 persons by evidence beyond a reasonable doubt."

Mason asked why, if his office brought so many weak cases, it has such a high conviction rate.

"We do pretty good — 92 percent of the people charged get convicted," he said during an interview in July, adding that 88 percent of the people indicted enter guilty pleas. "I don't know what to say about that except that it's a pretty good result."

### **Federal judge blasts police for lacking warrant**

That didn't help Rodriguez.

His ordeal at the Justice Center began at the grand jury, where Cleveland police Detective Gerald Hall testified quickly and with few details on July 17, 2006. He described how a confidential informant told officers that a stolen dump truck was sitting at Rodriguez's business, M&M Towing on Harvard Avenue.

Police went to the business July 7, claiming they were doing an inspection. They found the vehicle and arrested Rodriguez. They also seized some of his tow trucks. A week after the search, police went back again, looking for more stolen parts.

Hall returned to the grand jury for another short visit in October 2006 and obtained additional charges of receiving stolen property and possessing criminal tools.

In January 2007, Rodriguez's case went to a jury trial before Cuyahoga County Common Pleas Judge Joan

Synerberg. After several witnesses testified, Synerberg acquitted Rodriguez of all the charges, citing a lack of evidence.

"I didn't hear any evidence whatsoever as far as what Mr. Rodriguez knew or had reasonable cause to believe," Synerberg told lawyers.

In 2008, Rodriguez sued Cleveland police in U.S. District Court in Cleveland, saying Cleveland police violated his civil rights. In an opinion, Judge James Gwin blasted officers, saying they needed a search warrant before entering Rodriguez's business.

Hall was the only witness to testify against Rodriguez at the grand jury. In most cases before the secret panel, only one witness testifies, often reading a summary or report of the crime. Within minutes, the witness' testimony is over.

And a victim seldom sees the inside of a grand jury room, except in some sex crimes.

### Grand juries may rely on secondhand testimony

For more than two decades, the American Bar Association has called on prosecutors to use eyewitness testimony when possible instead of depending on police and others to give secondhand accounts.

Several Cuyahoga County judges, including Richard McMonagle, Carolyn Friedland and Eileen A. Gallagher, said they believe one way to strengthen cases is to make more victims testify before the grand jury, because it would make the victims more willing to take the witness stand in a courtroom, and it would solidify their testimony.

Prosecutors, however, said forcing victims to testify a number of times at hearings and at a trial causes more problems for the victims, because they must make arrangements to leave work or their children to get downtown.

Few victims or police officers ever see the inside of a grand jury room.

To reduce overtime costs and keep more officers on the street, Mason's office said, departments use liaison officers. The officers simply summarize

#### Basic facts about grand juries

- Grand juries in Ohio **determine whether someone should be charged with a crime**, based on the evidence prosecutors present in closed-door hearings.
- In Cuyahoga County, **as many as four grand juries hear cases at any time**. The juries usually meet twice a week.
- Nine people vote, and **seven of the nine must vote in favor to return an indictment**, a charge that prosecutors must prove beyond a reasonable doubt in court. They are selected from voter rolls, though a judge selects the foreperson.
- In most cases, rather than send investigating officers to testify, **police departments use a liaison officer to testify** before the grand jury based on the investigations of other officers. That enables most officers to remain on the road, rather than waiting to testify.
- The testimony from police or other witnesses, in most cases, **lasts just minutes**.

incident reports, detectives' files or interview notes for the grand jurors.

Though the idea helps police, grand jury forepersons have said in reports that they want to hear the investigating officers testify, because those officers have the most information.

The forepersons also have complained about what they saw as the piling on of too many charges.

Stanley Miller, the executive director of the NAACP in Cleveland, served as a grand jury foreman. In a report to Common Pleas Judge Timothy J. McGinty in September 2009, Miller said he had grown tired of what he called over-indicting.

"It appears the process is built on throwing as many charges as possible at a defendant and allowing the charges 'to work themselves out upstairs during the trial,'" Miller said in the report.

Mason's top supervisors said in an interview in June that they do not pile on. They stressed that if the evidence meets the standards of the law, they will seek charges.

W. Thomas Dillard, a former U.S. attorney in Florida, has been one of the country's top critics of the grand jury system. In 2003, he co-authored a report for the Cato Institute, a libertarian think tank in Washington, D.C., called "**A Grand Facade: How the grand jury was captured by government.**"

In the report, Dillard said grand jurors have come to rely too much on prosecutors: "The single most important fact to appreciate about the grand jury system is that it is the prosecutor who calls the shots and dominates the entire process. The grand jurors have become little more than window dressing."

In an interview, Dillard said, "The bottom line is that it is time to begin reviewing the whole process."

### **States use grand juries in different ways**

All states have grand juries, but the panels' roles differ widely. Ohio is one of 19 states that use grand juries to listen to evidence and decide whether felony charges should be brought. Those 19 states use a system similar to what the federal government uses.

- Grand juries determine only whether evidence of a crime exists and whether a suspect should be charged. **Trial juries decide guilt.**

SOURCES: Cuyahoga County court records, **Ohio Judicial Conference**



Mike Levy, The Plain Dealer

Stanley Miller, executive director of the Cleveland NAACP: "It appears the process is built on throwing as many charges as possible at a defendant."

In Florida, the panel is used only on death penalty cases or special investigations.

Had police in Pennsylvania investigated and arrested a towing company owner after a search of his property, a probable-cause hearing would have followed. That would have allowed the owner's attorney to question police officers.

New York state for years has given suspects the right to testify before the grand jury, but they open themselves up to prosecutors' questions. Defense attorneys also are allowed in the proceedings, but they can only observe.

Prosecutors in Ohio can bring charges, known as informations, without the grand jury. But they use the secret panel, often as another step in the screening process. Rick Bell, an assistant Cuyahoga County prosecutor, said the office also seeks input and reaction from grand jurors.

Prosecutors also can take a case to another grand jury if they do not get the result they wanted, meaning some charges were not issued that prosecutors had sought. Bell said Cuyahoga County prosecutors try to avoid that.

He said that if the office gets new information, it attempts to go back to the initial grand jury that heard the case and present it.

But few prosecutors return to the grand jury to correct errors in testimony.

### **Detective was wrong, but case went ahead**

Take the case of **Charice Gilmore**. The Cleveland mother of three was indicted last year after a Cleveland police detective told a grand jury that Gilmore was at the center of a melee off West 39th Street and Archwood Avenue, according to grand jury testimony.

The detective, James Kiefer, said Gilmore struck an 11-year-old girl in the face and ran to a nearby porch once patrol cars pulled up, the testimony shows.

But Gilmore wasn't there.

In fact, she was about 30 miles away, in Elyria - sitting with her probation officer. Once prosecutors learned of the error, they continued their path to trial, saying Gilmore touched off the fight by threatening some girls the morning of the fight. There is no indication that any prosecutor returned to the grand jury to correct Kiefer's testimony.

O'Malley, Mason's first assistant, stressed that a key portion of Kiefer's testimony was correct: The prosecutor said Kiefer correctly told the panel that Gilmore instigated the brawl. Two of the girls attacked testified at trial that



[View full size](#)

Lonnie Timmons III, The Plain Dealer

Charice Gilmore was indicted after a police detective put her at the scene of a fight, but she was actually 25 miles away.

Gilmore also yelled at them earlier in the day, saying that they would be beaten up later. Prosecutors stress that it is common that witnesses' statements change as the case makes its way to trial. In many cases, they simply amend the charges or dismiss what can no longer be proven.

Ultimately, a judge ruled that Gilmore didn't organize the fight and acquitted her of all charges.

In the meantime, Rodriguez, the former owner of M&M, struggles to regain his old life. He wants a towing business again, yearns for his reputation and waits as his lawsuit crawls through federal court.

For four years now, he has been fighting to recover from seven minutes.

#### **Part 4: Renaldo Payne: 'This was all over \$20'**

*To reach these Plain Dealer reporters: [jcaniglia@plaind.com](mailto:jcaniglia@plaind.com), 216-999-4097 | [agarrett@plaind.com](mailto:agarrett@plaind.com), 216-999-4814*

© 2010 cleveland.com. All rights reserved.