



Darren Wilson Is Not an Outlier

Why cops are almost never indicted for shooting someone in the line of duty.

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A St. Louis County grand jury spent more than three months hearing evidence about the shooting death of Michael Brown. It took jurors less than three days to decide that there wasn't enough to convince them to indict Ferguson police officer Darren Wilson. That result would have been exceedingly rare if Wilson were a regular citizen. Because he was a cop the outcome was close to inevitable.

As we've all heard by now, any halfway-decent prosecutor can get a grand jury to "indict a ham sandwich" if that's the outcome she wants. The most recent data back that up: According to the FBI's Bureau of Justice Statistics, U.S. attorneys prosecuted 162,000 federal cases in 2010, with grand juries returning an indictment on all but 11 of them.

In Wilson's case, though, St. Louis County Prosecutor Bob McCulloch's team didn't ask the grand jury for an indictment. Instead, they bombarded jurors with all the available evidence and — depending on how you read the court transcripts — either crafted a defense of the officer or sat back and let the jury make up its own mind. Setting aside the unusual mechanics of these particular proceedings, there's plenty of reason to believe that Wilson was never going to be punished by our criminal justice system. The reason? Nearly everyone involved in the system is willing to believe that an on-duty officer who takes another citizen's life was justified in doing so.

Police officers get that benefit of the doubt at every step along the way. It starts with the officers who decide how aggressively to investigate in the first place, then goes to the government attorneys who decide whether to prosecute, then to the citizens who make up the grand jury that decides whether to indict, and then (sometimes) to the regular jurors who decide whether to convict.

The lack of serious second-guessing is baked into the system. Our laws give officers broad leeway to use lethal force when they believe their or someone else's life is in danger. The U.S. Supreme Court cemented the scope of that authority in 1989's *Graham v. Connor*, a case involving police officers who apparently mistook a diabetic who was behaving erratically due to his low blood sugar for a belligerent drunk. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight," Chief Justice William Rehnquist wrote in the opinion.

In short, it's not whether the officer is objectively correct when he uses force; it's whether he subjectively believed that he was right in the moment he did. Wilson told the grand jury that he feared his life was in danger during his encounter with Brown. The jurors weren't tasked with assessing whether Wilson was actually in danger. Rather, they had to surmise whether it was reasonable for him to assume he was in peril. There's that benefit of the doubt.

There is no definitive tally for the number of officers who are indicted by grand juries after they shoot and kill a suspect on the job. But perhaps the best snapshot of a society that's willing to take an officer at his word comes from Philip Stinson, an assistant professor at Bowling Green State University who has spent years researching the arrests of police officers for various crimes. According to Stinson's research, 41 U.S. officers were charged with either murder or manslaughter in connection with an on-duty shooting between 2005 and 2011. For comparison, the FBI reported a total of 2,718 "justified homicides" by law enforcement officers during that seven-year time period. That tally is widely considered incomplete by those familiar with how those numbers are counted (see item above). Still, even that low-end estimate suggests that police shoot and kill someone in the United States more than once a day, on average. The overwhelming majority of those killings are deemed justified before the case ever reaches a jury.

When officers do get charged, meanwhile, they are significantly less likely to be convicted than your run-of-the-mill citizen. According to the Cato Institute, the conviction rate for officers charged with criminal misconduct is about 1 in 3 — half the typical rate among the general population.

"Juries and trial court judges are seemingly reluctant to convict in criminal court an officer whose crimes rose out of an on-duty incident that occurred as part of their job," Stinson, who compiled his research with the help of a federal grant, told the *Wall Street Journal*.

Another reason that cops get the benefit of the doubt is that ordinary people are inclined to give it to them. In a Gallup survey this June, the police were the third-highest-rated institution in terms of public confidence, trailing only the military and small business. If you suspect there's probably a racial disparity in how citizens view the police, then you're right. Polling indeed suggests that blacks are more skeptical than whites when it comes to trusting the cops — still, 45 percent of black respondents to a separate Gallup survey rated officers' general honesty and ethics as "high" or "very high," with less than 1 in 5 giving them a grade of "low" or worse.

Now extend that trust-the-cop dynamic to police shootings. There's always at least one officer who says the shooting was justified: the cop who pulled the trigger. It doesn't hurt the officer's case that in fatal shootings there's no competing story from the person who was killed. In lieu of that alternative narrative is the baseline assumption that the cops are the good guys and the victims of police shootings are criminals. Meanwhile, as FiveThirtyEight's Ben Casselman has argued, prosecutors rely on the police to do their jobs day in and day out, so they have few reasons to prosecute a cop aggressively and plenty of incentive to present a less persuasive case than they might otherwise, consciously or not.

There are times when an officer has no other choice but to open fire. Those cases certainly exist, even if they are likely more uncommon than is generally accepted. But in the wake of the

decision not to indict Wilson, it's worth acknowledging that our criminal justice system — both explicitly and implicitly — backs the police officer who does the shooting rather than the person who gets shot.

A mystery: How many police killings?

The *Wall Street Journal* tried to find out how many police shootings are ruled "justifiable homicides" by surveying the 105 biggest police departments in the country. The newspaper came to this conclusion: "It is nearly impossible to determine how many people are killed by the police each year." A national count kept by the FBI reported 1,242 justifiable homicides by police officers from those 105 departments between 2007 and 2012. But some departments do not report the incidents to the FBI. For instance, the Fairfax County Police Department in Virginia told the *Journal* it didn't think of justifiable homicides as an "actual offense" worthy of reporting. And killings by Florida officers haven't been part of the FBI count since 1996; an official told the *Journal* that outdated software prevents the state from reporting its numbers.