



# Special Prosecutors Are an Immediate Solution to Police Bias

*The grand jury system is preferred by law enforcement officers because of the close relationship between police and prosecutors. But when cops are on trial, we need to cut that cord*

[Elizabeth Kulze](#)

December 10, 2014

Keyarika Diggles was luckier than Michael Brown and Eric Garner—the 25-year-old was a victim of police brutality, but she did not die. In May 2013, police in Jasper, Texas, slammed her head against a countertop, pulled her by her hair and eventually dragged her into a holding cell by one of her ankles. She had been arrested for failing to pay an outstanding traffic ticket, and unbeknownst to the officers, she was also pregnant at the time.

As with Garner's death, the incident was caught on video, which shows cops attacking Diggles after she began yelling at them for cutting her phone call short. She was awarded \$75,000 in a civil rights lawsuit against the city, and while the two police officers that attacked her were fired, late last month a Houston grand jury failed to indict them on a single charge.

It's a too familiar outcome of late, and one that amplifies the rallying cry common to the those still looking for justice: *The United States grand jury system is broken.*

Which then begs the question: How is a system that was designed to protect the constitutional rights of citizens now being used to quash them?

According to Timothy Lynch, a leading criminal justice expert with the Cato Institute, the problem is that grand juries have become “pawns of the prosecutor”—meaning they will rule according to the whim of the District Attorney who dominates the entire process. This is a trend Lynch and his colleagues have been observing for more than a decade, and in 2003 they authored a report, [“A Grand Façade: How the Grand Jury Was Captured by Government.”](#) In the report, they describe how an entity for which the “original purpose was to check prosecutorial power” has evolved into an “inquisitorial bulldozer that...now runs roughshod over the constitutional rights of citizens.”

The report primarily focuses on how prosecutors use grand juries to indict citizens on unfair terms, but the same biases are present when it's a police officer who stands to be indicted—only they have the opposite effect. Instead of using the grand jury process to subvert the defendant's rights, the prosecutor uses it to protect the officer and grant him or her special privileges.

“People need to realize that what goes on typically in grand juries is not happening when an officer is involved,” Lynch says. “Instead of the prosecutor acting as the aggressor, he is easing the officer through the process with kid gloves, guiding him through the process in such a way that the grand jury will not indict him.”

Or as Eric Garner’s public defenders wrote in a [recent article](#) in Vanity Fair: “When an officer is investigated for wrongdoing, an entire system mobilizes to protect him.”

The reason for this is where the issue tends to get murky. Prosecutors cannot do their job well without a good relationship with the police. They depend on them to get convictions and call on them as witnesses on a weekly basis. “There is a working relationship between district attorneys and the police,” Lynch says. “And prosecutors are human. They don’t want to turn around and say that the guy they were working with last week broke the law. The impartiality is just not there.”

Prosecutors also have plenty opportunities to sway the grand jury decision in the direction of their choosing. They can call on certain witnesses to testify when they know the witnesses will be unable to show up, or they can bring in all of the evidence necessary to tell one side of the story, while ignoring the rest. And because the grand jury process is conducted behind closed doors, no one is looking over the prosecutor’s shoulder to keep him or her in check.

In some districts, law enforcement even enjoys certain benefits that are not granted to ordinary citizens. In Georgia, for example, police officers who have been accused of wrongdoing are allowed to bring their attorneys to the grand jury trial upon testifying, and the attorneys are also permitted to give closing statements to the jurors. And [in Houston](#), grand juries in many instances were found to be composed of police-sympathizers such as retired officers or relatives of officers, which may or may not have played a part in Diggles’ case.

Another advantage law enforcement enjoys with regard to the grand jury process—which is true in all districts—is the willingness of fellow officers to testify in favor of their colleague. In the Garner case alone, some 28 police officers and emergency responders took to the witness stand to speak for New York Police Department officer Daniel Pantaleo, which “might have the effect of overwhelming the grand jury,” Lynch says. “Ordinary citizens don’t have that kind of privilege.”

One immediate solution—favored by both Lynch and Garner’s defense team—is to start appointing independent prosecutors to replace district attorneys in police brutality cases. This would help to free the grand jury process of entrenched bias and, well, bring justice back to the justice system.

“This would be a good practice, a best practice,” Lynch says. “It’s important to have an impartial investigation, and too often when there are allegations of police misconduct and the local prosecutor is looking into it, there is a conflict of interest.”