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Grand Juries Should Not Hear Police Misconduct Cases: Grand Juries will Indict Anything, but a Police Officer

Kaeleigh Williams*

The famous modern legal saying that a prosecutor can get a grand jury to “indict a sandwich” – meaning, indict *anything* – has been around since the 1980s.¹ While no comprehensive statistics are kept on the results of grand jury hearings in police officer misconduct cases, statistics on federal grand jury indictments show the famous legal saying is not far from reality.² In 2010, out of the 162,000 federal cases prosecuted that year, grand juries declined to indict in only eleven cases.³ Despite these statistics, grand juries almost never indict in police officer misconduct cases. This disparity, coupled with the current events dealing with police officer misconduct, have led many to wonder why there is this exception regarding police officers.

Grand juries are “the citizen-bodies tasked with determining whether a prosecutor has probable cause to go forward with charges against a criminal suspect.”⁴ Grand juries do not hold the power to decide the guilt or punishment of a party. There are no defense lawyers present for the opposing side, which allows the prosecutor to have complete control over the hearing. The jury completely depends on the prosecutor for all its information, advice, and direction. The prosecutor explains the law to the

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¹ “Indict a ham sandwich,” THE BIG APPLE, https://www.barrypopik.com/index.php/new_york_city/entry/indict_a_ham_sandwich (last visited Oct. 11, 2021).

² Bill Hutchinson, *Breonna Taylor case sparks renewed scrutiny of grand juries in police misconduct cases*, ABC NEWS (Oct. 9, 2020), <https://abcnews.go.com/US/breonna-taylor-case-sparks-renewed-scrutiny-grand-juries/story>.

³ *Id.*

⁴ Kate Levine, *How We Prosecute the Police*, 104 GEO. L.J. 745, 747 (2018).

jury and works with them to gather evidence and hear testimony.⁵ The grand jury process operates under a veil of secrecy to protect witnesses and the innocent, as well as encourage full disclosure.⁶ Unlike most criminal proceedings, the details of the grand jury proceedings largely remain confidential. Jurors are not allowed to talk about what happened during the grand jury proceeding or the information that the prosecutor presented.⁷ Grand jury decisions in police officer misconduct cases, like police shootings, have come under scrutiny because indictments remain relatively rare.⁸ In cases involving everyday people, indictments are easily obtained.⁹ Typically, a police report is read to the grand jury, the indictment is drafted, and the grand jurors vote within minutes.¹⁰ But in cases involving police misconduct, the process is drawn-out and can take months.¹¹ This is especially true in cases involving Black Americans and law enforcement officers.¹²

Criticism involving grand juries first sparked in 2015, when a grand jury declined to indict police officers involved in the chokehold death of Eric Garner and in the fatal police shootings of Michael Brown and Tamir Rice.¹³ Sadly, again in 2021, a Kentucky grand jury failed to return a murder indictment against three police officers involved in the fatal shooting of Breonna Taylor.¹⁴ This scenario sounded all too familiar to many in America, especially those of color. Lingering questions about the facts in the case and how the grand jury ultimately reached its

⁵ Dayna Vadala, *Prosecuting the Police: How America's Criminal Justice System Has Failed Breonna Taylor and Other People of Color*, TRINITY COLL. DIGITAL REPOSITORY (2021).

⁶ Hutchinson, *supra* note 2.

⁷ *See id.*

⁸ *Id.*

⁹ Terry Gilbert et al., *Why grand juries so rarely indict in police shootings*, CLEVELAND (Sept. 29, 2017),

https://www.cleveland.com/opinion/2017/09/why_grand_juries_so_rarely_ind.html.

¹⁰ *Id.*

¹¹ *Id.*

¹² *See Vadala, supra* note 5.

¹³ Hutchinson, *supra* note 2.

¹⁴ *Id.*

controversial decision quickly followed. All the previously mentioned cases involved Black Americans being killed by police officers. Taylor's death, as well as countless others, sparked nationwide protests and demands for justice and accountability among law enforcement officers and the legal system.¹⁵ With so many instances of unarmed Americans being shot and killed, it is hard to understand how these police officers escape accountability. Many would argue that the answers lie in systemic bias that favors police officers, from the way these cases are investigated to the skewed legal standards governing police misconduct.¹⁶

A growing number of civil rights activists and legal scholars, who have grown tired with grand juries repeatedly declining to indict police officers in misconduct cases, call for reform in the criminal justice system.¹⁷ The need for more transparency in grand jury proceedings dealing with misconduct is long overdue. Activists and scholars believe the veil of secrecy in grand jury hearings concerning police misconduct should be removed, especially when big, celebrated cases come along,¹⁸ like the ones mentioned above. While there are good reasons for grand jury secrecy, the secrecy of the grand jury proceedings also means that prosecutors, if so inclined, can engineer the outcome through their choice of evidence, witnesses to present to the grand jury, the legal instructions given to grand jurors, and the charging recommendations that they make or do not make in a given case.¹⁹

The fact that prosecutors have immense control over grand jury proceedings can cause problems for several reasons. First, the prosecutor may use the grand jury as a political cover. For example, a prosecutor who

¹⁵ *Grand Jury Fails to Hold Police Officers Accountable for Breonna Taylor's Death*, INNOCENCE PROJECT (Sept. 23, 2020), <https://innocenceproject.org/breonna-taylor-police-accountability-indictment>.

¹⁶ Gilbert, *supra* note 9.

¹⁷ Hutchinson, *supra* note 2.

¹⁸ *Id.*

¹⁹ *Id.*

does not want to move forward on a particular case can claim that the decision not to press charges was made by the grand jury in order to shield their reputation.²⁰ Second, prosecutors can intentionally present a weak case to the grand jury, leading the grand jury to refuse to indict. Prosecutors have certain incentives not to suggest certain charges to the jury and to manipulate a case in a way that will benefit the officer in question.²¹ Prosecutors often work closely with police officers, creating a conflict of interest in maintaining their working relationships and their duty to prosecute police brutality. This lack of accountability creates a lack of justice for victims of police brutality.²²

There are alternatives to using grand juries in police misconduct cases. For example, some states allow prosecutors the choice of seeking a criminal indictment in a grand jury or filing a criminal complaint on their own following an investigation.²³ In two recent high-profile cases, the police-involved murder of George Floyd in Minneapolis and the fatal police-involved shooting of Rayshard Brooks in Atlanta, prosecutors filed criminal complaints charging the police officers with murder.²⁴ In two states, Connecticut and Pennsylvania, the use of grand juries for all criminal indictments was abolished, opting instead for preliminary hearings in open court with a judge deciding if there is probable cause to support the charges based on the evidence presented by prosecutors and challenged by defense attorneys.²⁵ Unlike grand juries, preliminary hearings are typically open to the public and involve lawyers on both sides, as well as the judge. These differences can be significant to solving the problems that come with grand jury proceedings and the public.

²⁰ Vadala, *supra* note 5.

²¹ *See id.*

²² *Id.*

²³ Hutchinson, *supra* note 2.

²⁴ *Id.*

²⁵ *Id.*

In conclusion, there are many controversial aspects of the grand jury process in relation with police officer misconduct cases. These issues range from the way the grand jury process works, to extreme prosecutorial control, and the systemic bias surrounding people of color. Americans need more transparency when it comes to these controversial, emotional, and numerous accounts of police officer misconduct cases. Making the decision to abolish the use of grand juries in these cases is a significant step that must be done to achieve the goal of justice and accountability for the victims of police officer brutality and misconduct.

Edited by Alex Beezley