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Patience unwarranted; reform needed

Tamir case demonstrates the flaws in justice system

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CORY SHAFFER | NORTHEAST OHIO MEDIA GROUP

Tamir Rice's mother Samaria Rice, center, and Tamir's cousin, LaTonya Goldsby, stand in a group of protesters at a press conference on Oct. 16 outside the Cuyahoga County Justice Center.

The Plain Dealer's call for patience with prosecutor Timothy McGinty's almost yearlong inaction in presenting the Tamir Rice shooting death to a grand jury is disturbing, particularly in view of McGinty's irresponsible actions in releasing two expert reports suggesting the shooting was reasonable.

But The Plain Dealer didn't stop there. It also ran a piece within days of the editorial, inviting criminal defense attorneys to suggest how extremely difficult it would be to prove that any crime was committed by the officers involved. If The Plain Dealer's intent was to preclude any fair determination of the evidence before a grand jury determination, they might have succeeded with the help of McGinty, as the prospective jury pool is now likely contaminated by a biased narrative of the case.

The ultimate question — why prosecuting cops for deadly force is met with reluctance — requires a journey into the heart of the criminal justice system.

First, there is a double standard when cops kill people. If a common citizen shoots a 12-year-old boy with a toy gun, she would be arrested immediately, and a grand jury would act within weeks with an indictment, likely for murder. Any self-defense claim would be resolved at a trial. But prosecutors, who work closely with police, hesitate to aggressively bring cops to justice.

Second, the language of the law is inadequate when prosecuting police. In the recent prosecution of Michael Brelo, who was acquitted by a judge, not a jury, the judge used an "objectively reasonable" standard to clear Brelo's actions in shooting 49 bullets into the bodies of Melissa Williams and Timothy Russell as they sat, unarmed in a vehicle. Many people thought his conduct warranted a murder or at least manslaughter. Yet Brelo walked free, in part, because he was afforded a legal standard which only applies to police, not anyone else who might use force. We need a state civil rights criminal statute (similar to the federal law) designed to deal with police who cross the line and violate the constitutional rights of citizens.

Third, the grand jury itself is a wounded and outdated institution, created by good intentions over 200 years ago, but now is an affront to justice on many levels. To an average citizen, particularly people of color, the grand jury is a secret and repressive body, a tool of the police and prosecutors to ram through overcharged indictments that force plea bargains for those too poor or too afraid to risk a trial where the deck is stacked. But the adverse is true for police who are afforded preferential deference, caution, and exhaustive reviews, and likely no input from a prosecutor to urge a vote in favor of an indictment.

To be sure, McGinty has created for himself a public relations nightmare with calls for his recusal from the Rice case. But it's his own fault because of his erratic and inconsistent approaches to police cases. In the Kenny Smith case — where a federal jury recently awarded $5. 5 million dollars for the unconstitutional use of deadly force against a 20-year-old victim — McGinty had earlier called the cop's actions heroic, after not allowing the grand jury to vote on whether to issue an indictment. Now, after the federal verdict, he has been forced to refer the case to the Sheriff's Department for a reinvestigation. Clearly, patience is not what we need, but systemic reform. In the meantime, replacing McGinty with a special prosecutor might be a good idea, and would restore some confidence to the Tamir Rice family.

Gilbert is a partner with the law firm of Friedman and Gilbert. He specializes in civil rights and criminal defense litigation, and obtained the recent verdict on behalf of the family of Kenneth Smith.