# The Tamir Rice Story: How to Make a Police Shooting Disappear

By
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Maybe you heard about the Tamir Rice case and wondered: How does a 12-year-old boy with a toy gun on a playground get shot to death on-camera by the police without anyone getting charged? Put another way: How does a small group of government officials make this case disappear without a trial? Here's how.

The prosecutor pacing in front of the witness was holding a toy gun that looked like a real gun, which was the same kind of toy the boy had been playing with the day he got shot. A rookie Cleveland police officer had fired twice at close range, and one bullet hit the boy just left of his belly button, carved downward through his intestines and a major vein, and embedded in his pelvis an inch to the right of center.

The witness, a retired cop named Roger Clark, thought the gun was a curious prop for a grand jury. The boy was dead, and had been for more than a year. He'd been accused of no crime, ever. Why the toy? There is no need for theatrics in grand-jury proceedings. They are entirely one-sided forums. Prosecutors decide what witnesses to call and what evidence to present. They instruct the grand jurors, ordinary citizens drawn from the same pool as trial jurors, on the law. There is no defense present because the most a grand jury can do is issue an indictment, which means only that there's enough evidence of a crime that a judge or jury should sort it out. It is a very low threshold, and it is reached as a matter of plodding routine. It also is done entirely in secret. *Who was a prop supposed to impress?*

Clark wasn't even there to testify about the boy. The grand jury was investigating two Cleveland police officers—the rookie who fired and his veteran partner—to determine if there was probable cause to believe that they'd acted unreasonably and unlawfully when they drove to within ten feet of the boy and, even before stopping, shot him. Clark is an expert in that general area, police shootings. He spent more than 27 years with the Los Angeles County Sheriff's Department, where, among other things, he taught officers the proper use of force, investigated officers who used deadly force, and helped write tactical deployment guidelines designed to minimize the use of force. Since he retired in 1993, he has studied hundreds of fatal use-of-force incidents, and he has testified many dozens of times in state and federal courts.

Clark had studied all of the available evidence in this case—video, witness statements, forensic reconstructions—and he had prepared a report detailing his findings. He did not believe the officers acted reasonably, and he did not believe the shooting was justified. When he was called to testify, on December 7, he expected he would summarize those opinions, answer a few clarifying questions, then be dismissed with a polite thank-you for his time and effort.

“Instead,” he told me, “it was immediately very hostile.”

There were two prosecutors in the room. The first sat with the grand jurors at a big U-shaped conference table, as if he were one of them, not an officer of the court presenting evidence. Clark thought he smirked a lot. The other, the one pacing with the toy gun, he smirked, too. “The facial expressions, the body language...disdain,” Clark said. “Yeah, that’s a good word: *disdain*.”

The prosecutors reminded Clark, and the grand jurors, that the officers had responded to a 911 call about a black male with a gun in a park—an “active shooter,” they said, though no shots had been fired, there was no one nearby to be shot when police arrived, and the black male turned out to be a 12-year-old boy alone in a gazebo. *Active shooter*. The phrase was used repeatedly, Clark told me. “They had to be brave,” the pacing prosecutor, Matthew Meyer, said. “They *were* brave that day.” Or maybe they were reckless, which was one of Clark’s conclusions. Maybe if they hadn’t ridden up in a frenzy, the boy wouldn’t be dead. There’s case law about that, Clark started to explain, opinions that can help define whether force was used appropriately.

Meyer started pacing again.

A California Supreme Court case, Clark continued, explicitly held that a shooting should be considered in a context broader than the instant the trigger was pulled. That did not suggest a cop should be second-guessed back to his morning coffee.

But if an officer, through tactical incompetence or outright belligerence, created the circumstance that put him in fear for his life...

The prosecution argued that video-surveillance footage showed Rice reaching for his toy gun before he was shot.

Meyer stopped, pivoted, swung his arm up, aimed his fake gun at Clark’s face. “Does he have to point it at you like this before you shoot?” Clark remembered Meyer asking. “That would scare you, right?” Clark looked at him for a moment. “No,” he said. He’d had guns pointed at him before. But it would scare most people. Probably scare the good citizens sitting on a grand jury in a city with a miserably high crime rate.

The prop was for them. But it was only theater. Because the boy never pointed a gun at a cop. He wasn’t given the chance to even put his hands up.

## The Boy Was Named Tamir Rice.

If you didn’t know him, or don’t know his city, or if you simply are too exhausted to sift one story from all the others, you might vaguely remember him as the kid who got killed in Cleveland during that period, from roughly the summer of 2014 through the spring of 2015, when black people getting killed by police received an unusual amount of national attention. Tamir was shot on November 22, 2014, which was after John Crawford in Dayton and Michael Brown in Ferguson but before Rumain Brisbon in Phoenix and Walter Scott in South Carolina.

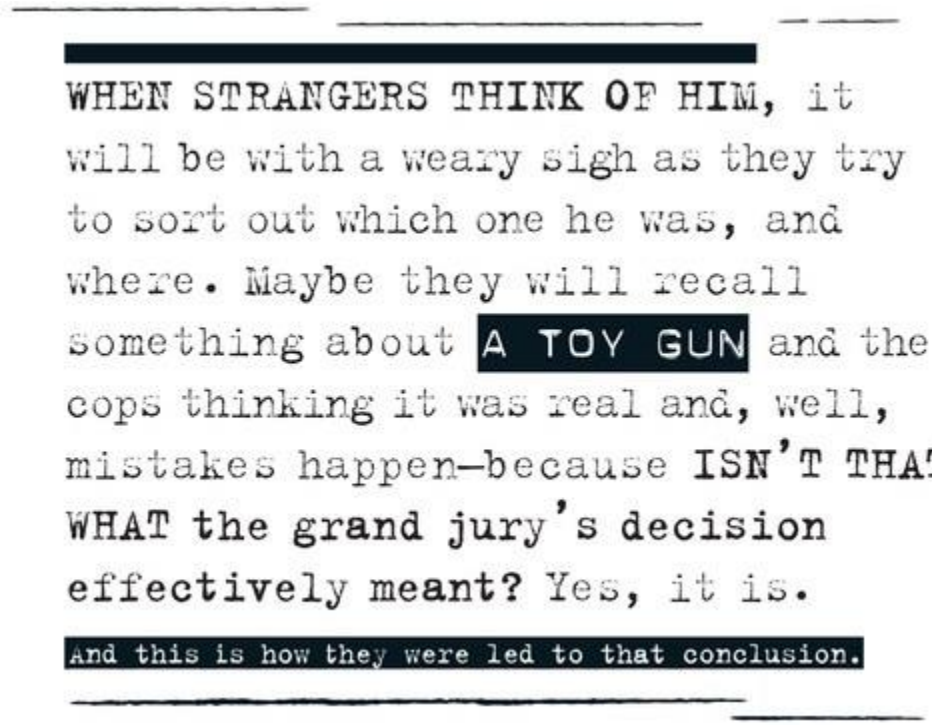
The grand jury in late December declined to indict either officer involved in killing Tamir, and the city of Cleveland denied anyone did anything wrong when, in April 2016, it agreed to pay his estate, his mother, Samaria, and his sister Tajai $6 million. The news reports and most of the columns and commentaries that followed those events invariably summarized his death as an awful mistake: Tamir had been playing with a toy gun that the police mistook for a real one when he reached into his

waistband, which is why the rookie shot him within seconds of arriving in Cudell park. A “perfect storm of human error, mistakes, and miscommunications by all involved,” Cuyahoga County prosecutor Timothy J. McGinty said. The grand jury had been thorough and diligent, he said. The grand jury had heard all the facts and had reached a reasoned, if difficult, decision. That he agreed with the decision, and released a 74-page report explaining why, was secondary; a panel of fair-minded citizens, he stressed, had settled the matter.

There was a dreary, routine trajectory from that point. The city would pay to settle the civil suit, of course. Then months would pass and memories would get foggy—*Tamir? was that the kid in Cleveland?*—until all that was left was a mushy insistence that no one was really to blame for a dead kid. The activists could make all the noise they wanted, but reasonable people would have to agree to disagree. “If you don’t trust the grand jury,” McGinty said, quoting a local judge, “you don’t trust your neighbors.”

That is disingenuous. Grand jurors, almost without exception, follow where prosecutors lead them. And when they don’t return indictments in high-profile cases, it’s almost always because the prosecutor does not want them to. That he makes that preference known, whether explicitly or implicitly, in the secret confines of the grand-jury room makes it no less deliberate.

Since he took office, in January 2013, McGinty has presented, or has promised to present, evidence related to every police killing of a civilian in Cuyahoga County—20 in three years—to a grand jury. The reason, he repeated after the December non-indictment, was to increase transparency, to “end the traditional system where the prosecutor privately reviewed police reports, then decided if an officer should be charged. That secrecy—which appeared arbitrary without a public investigative report—undermined community confidence.”




But there is nothing in that traditional system—which remains the system for everyone except, apparently, police officers—that requires reviews to be done privately. McGinty can distribute public records; he can consult outside experts and release their analyses; he can even publish a 74-page report explaining why he decided a shooting was justified or not. That is, after all, the job he was elected to do.

Grand-jury proceedings, on the other hand, are by law secret. (McGinty's office, in fact, stressed that point: Clark and other witnesses "can characterize their experience before the Grand Jury in any way they want, but prosecutors cannot reveal what was said or done in the room," a spokesman e-mailed me. "So by definition, you're only getting one side.") What evidence is presented and how is not a matter of public record. Nor is whether a witness is treated with deference or, to borrow phrasing from that 74-page report, as one of the "purported experts" hired by lawyers "representing the Rice family in a federal civil lawsuit." Only the beginning and the end of the process—the apparently reckless shooting of a black child and the grand jury's decision that that killing was not unreasonable—are truly public. Everything in between is either cloaked in legal secrecy or dribbled out in carefully choreographed press releases. And when it's over, when the details are sufficiently blurred and the story is effectively muddled, the prosecutor can take refuge behind those anonymous grand jurors when he declares the whole episode to be nothing more than a sad accident.

That's how a dead child, how Tamir Rice, eventually becomes a half-remembered name on a long and miserable list of other half-remembered names. When strangers think of him, if they think of him, it will be with a weary sigh as they try to sort out which one he was, and where. Maybe they will recall something about a toy gun and the cops thinking it was real and, well, mistakes happen—because isn't that what the grand jury's decision effectively meant?

Yes, it is. And this is how they were led to that conclusion.

The park where Tamir got shot is a couple hundred yards from where he lived, in a row house across Madison Avenue on the west side of Cleveland. Samaria had moved to that neighborhood the previous March partly because Cudell park was so close. There was a rec center on the north side, where Tamir and his sister had been going for years, and there was a school on the south side, where Tamir was in the sixth grade. Samaria would check the park every now and again, make sure no dope boys were loitering about. But between that and the school and the rec center, she figured her children were safe.

Tamir was at Cudell by midmorning on the Saturday he got shot. Usually he'd play basketball or Ping-Pong or games on an old phone that could connect to the rec-center Wi-Fi. But his friend had an Airsoft pellet gun his dad bought him at Walmart, a replica of a Colt 1911 semi-automatic. It was supposed to have an orange tip on the barrel, except it stopped working once and Tamir's friend took it apart and fixed it but couldn't get the orange part back on. They traded, Tamir and his friend, a cell phone for the pellet gun, but only for the day: Tamir knew he'd catch hell if his mom found out he was playing with a toy gun.

He shot BBs at a few car tires in the parking lot, showed his friend how they didn't go straight. He knew enough to put the gun in his backpack when he went inside the rec center, though. He was there almost every day, never Samaria gave Tamir and his sister turkey sandwiches and fruit when they came home for lunch, and a few dollars to get chips and juice from the corner store. Then they went back to Cudell. Tamir was inside the rec center for a while, then outside, back and forth for more than an hour. On the sidewalk out front, he played with the pellet gun, drawing and pointing at pretend people and, sometimes, real people. No one seemed alarmed, though. Everyone knew Tamir, knew he was a kid, knew he was playing. Even if they didn't, Tamir didn't appear menacing: A man named Joe who was 81 and came to practice with an old-timers' basketball league saw Tamir pointing his gun at the ground only a few feet away and just ignored him.

A little after three o'clock, a guy with a tall-boy showed up in the park to wait for a 3:30 bus downtown. He didn't know Tamir. He saw a baby-faced guy, five feet seven, almost 200 pounds—Tamir was a big kid—pulling a gun in and out of his pants. Acting all gangsta, he thought. The man called 911 at 3:22. He was a little slurry, but not frantic. He politely asked the operator how she was, then told her

he was sitting in a park. “There’s a guy in here with a pistol,” he said, “and, you know, it’s probably fake, but he’s, like, pointing it at everybody.” The operator asked him where he was, exactly, and the caller repeated what he said the first time: “The guy keeps pulling it in and out of his pants—it’s probably fake, but you know what? He’s scaring the shit out of me.” He described Tamir’s clothes and then reported the guy with the pistol had moved to one of the swings on the playground. “Probably a juvenile, you know?” Finally: “He’s right nearby the, you know, the youth center or whatever, and he keeps pulling it in and out of his pants. I don’t know if it’s real or not.”

The 911 operator’s notes were passed to a dispatcher, who requested a squad car respond to Cudell park. She said there was a black male sitting on the swings, and she described his clothing. “So he keeps pulling a gun out of his pants and pointing it at people,” she said.

Another dispatcher cut in. “How many calls are we getting for that?”

“Nah, just the one so far.”

She left out the words *probably fake* and *probably a juvenile*, and categorized it as a Code 1 call, the highest priority.

At a church a mile south of Cudell, officer Frank Garmback was finishing up a false-alarm call with his partner, Timothy Loehmann, a probationary rookie who’d been on the force for about nine months and only patrolling the streets for about three. Garmback, in fact, was Loehmann’s field-training officer, responsible for teaching him how to become a proper police officer.

That was something at which Loehmann had failed multiple times. Almost two years earlier, he’d resigned from the police department in suburban Independence, which was going to fire him if he didn’t. In less than five months—most of which he’d spent at the academy—he’d been caught twice lying to his superiors, and he’d had his weapon taken away after a weepy breakdown on the shooting range. That was about a woman.

Being unable to separate his personal problems from the job, Deputy Chief Jim Polak wrote, “leads one to believe that he would not be able to substantially cope, or make good decisions, during or resulting from any other stressful situation.”

*Emotional immaturity* is the phrase Polak used in a five-page memo listing all the reasons Loehmann shouldn’t be a cop. “I do not believe time, nor training, will be able to change or correct these deficiencies,” he wrote.

But Loehmann kept at it. He applied to four other departments but got no offers. In September 2013, he failed the written exam for the Cuyahoga County Sheriff’s Department. Three months later, the Cleveland Division of Police gave him a conditional appointment. On March 3, 2014, he was hired as a patrolman.

Garmback drove. Cudell was a straight shot north on West Boulevard, across Madison, and into a parking lot separated from the playground by knee-high wooden posts. But Garmback took a different route, to a narrow block that dead-ends at the park. There were no posts there, only a few spindly trees.

The squad car bumped over the curb. The swings were empty. The only person anywhere nearby, in fact, was sitting at a concrete picnic table under a gazebo a few yards beyond the swings. He was not fiddling with a gun. He wasn’t doing anything at all.

Garmback did not stop.

Tamir stood up, took a few casual steps around the table.

Garmback braked. The squad car slid on wet grass dusted with snow. When it was even with Tamir, before it had stopped, Loehmann got out and fired. The muzzle of his gun was less than seven feet away.

Tamir collapsed.

Garmback radioed that shots had been fired. Black male down. Send an ambulance.

He and Loehmann did not help the boy on his back on a slab of cement, his small intestine spilling out of the hole in his abdomen. For four minutes, Tamir lay bleeding alone.

Survillance cameras recorded the entire encounter. Had Garmback and Loehmann been a couple of local gangbangers in a Toyota, that video would have been enough to convince a grand jury that there was probable cause to believe a crime had been committed, most likely aggravated murder. It happened so quickly, and with the shooter approaching the victim, that a claim of self-defense would have been laughable.

But police officers are not held to the same standards as civilians, nor should they be. They are expected to insert themselves into potentially volatile situations, to confront bad guys with weapons, to stand between chaos and public order. They will at times, even if only for a heartbeat, genuinely fear for their lives or the lives of others. There is a library of case law giving officers wide leeway on the use of deadly force. But these two guys drove up and shot a kid. And it's on video. "What we have is objective evidence that they summarily executed this child as fast as humanly possible," says Jonathan S. Abady, one of the attorneys representing Tamir's estate, mother, and sister. "There is nothing Tamir could have done to *not* get shot that day."

"It was almost like they were trying to blame me," Samaria Rice said. "They were talking to me like I was a bad mother, like I gave him that BB gun."

Maybe a jury would never convict them, and maybe McGinty would somehow believe the shooting was justified. But the major evidence to make that initial decision—whether to seek an indictment or not—was plainly visible. Weeks passed and McGinty did not make a determination one way or the other. Winter came and went and then most of spring. In early June, the sheriff's department gave McGinty's office a 211-page summary of its investigation. A week later, a sitting judge, ruling on a petition from eight perturbed citizens, issued a non-binding opinion that there was probable cause to charge both officers with crimes, including murder (Loehmann) and negligent homicide (Garmback). "After viewing [the video] several times," Judge Ronald B. Adrine wrote, "this court is still thunderstruck by how quickly this event turned deadly."

Still, no decision from McGinty.

Finally, at a meeting in the beginning of summer, almost seven months after Tamir was killed, Abady and his colleagues asked what was taking so long. An assistant prosecutor, according to Abady, said McGinty was trying to be "fair and thorough." He also said he was trying to find experts who could tell a grand jury whether the shooting was justified.

That is highly irregular. For one, experts rarely testify before grand jurors. The bar for an indictment is so low that any prosecutor with a functional ability to speak in complete sentences can clear it. Two, if

an expert believes killing Tamir was legally permissible, what's the point? If the prosecutor agrees, why waste the grand jury's time?

But set all that aside. Stipulate that fairness and thoroughness require experts to testify. There are many well-credentialed and prominent scholars who study police procedure; credible ones are not difficult to find. Who, Abady wanted to know, are those experts upon whom McGinty would be relying?

"People," Abady was told, "who you've never heard of."

The first two experts McGinty hired were a prosecutor from Colorado and a former FBI agent who's now an associate professor.

S. Lamar Sims, the prosecutor, was familiar to McGinty already: He'd spoken at a March 12, 2015, forum on deadly force hosted by McGinty's office, focusing specifically on how difficult it is, legally, to indict officers. Two months after that, in May, Sims had explained on a local Denver TV channel how he believed killings by police should be evaluated. "Often we will learn things, facts, after the incident that a reasonable officer did not know, or could not have known, at the time," he said. "The community may react to facts learned later. For example, looking around the nation, say you have a 12- or 13-year-old boy with a toy gun. We learn that later. The question is, what did the officer know at the time? What should a reasonable peace officer have known at the time when he or she took the steps that led to the use of physical force or deadly physical force?" That, he said, "is a difficult thing for a lot of people to understand."

Kimberly A. Crawford, the professor, was a supervisory special agent in the legal instruction unit at the FBI academy for 18 years. In that role, she co-authored a report that defended a sniper in the shooting of a fleeing woman during the Ruby Ridge standoff in 1992, which a Department of Justice task force later criticized in part for interpreting legal standards on deadly force in a manner too favorable to law enforcement.

Both Sims and Crawford focused only on the instant immediately before Loehmann fired, which, in their view, was the only legally relevant issue. Neither spoke to Loehmann or Garmback, but how was either officer supposed to know Tamir was a kid and the gun he might have had was a toy? Of course, stopping a few feet from Tamir gave them no time to learn either of those facts. But since they did, Crawford reasoned, "it becomes apparent that not only was Officer Loehmann required to make a split-second decision, but also that his response was a reasonable one." Meanwhile, to question that tactical decision, Sims argued, "is to engage in exactly the kind of 'Monday morning quarterbacking' the case law exhorts us to avoid." (Crawford called it "armchair quarterbacking." In her analysis, "Whether the officers' actions were courageous or foolhardy is not relevant to a constitutional review of the subsequent use of force.")

McGinty released both of those reports to the public by posting them on his office's website at eight o'clock on the Saturday night of Columbus Day weekend. Zoe Salzman, an attorney who works with Abady, remembers the time because she got her first phone call from a reporter at 8:01. That would suggest the reports were shared with the media before they were posted. They were not, however, shared with Samaria Rice or her attorneys. "They gave us no heads-up that those reports were coming," Salzman says. And by the time they returned from the holiday weekend and began to adequately critique the reports, the news cycle had moved on.

A third report, from a former Florida sheriff and consultant named W. Ken Katsaris—whom McGinty had hired to testify against a police officer in a previous case—was released on a Thursday in November. He, too, found the shooting justified. That perspective was not shared with Samaria Rice

or her attorneys before it was posted. McGinty, in a statement released with the Katsaris report, said that he was being open and transparent and most definitely wasn't drawing any conclusions but rather laying off that responsibility on the grand jurors. "I have faith in the people of this county," he said, "to fulfill their sworn duty to make a correct and honorable decision."

By the middle of November 2015, almost a year after Tamir was killed, McGinty still wouldn't say whether he thought either officer should be charged with a crime. But he had presented to the grand jury—and released to the public—the opinions of three experts that, in clear and confident language, absolved Garmback and Loehmann.

At a political forum on November 5, McGinty had also introduced another element into the public narrative his office was crafting: Samaria Rice was trying to make a buck off her dead boy. When he was asked about criticisms Abady and others had made of the Sims and Crawford reports (Katsaris wouldn't be released for another week), he answered, "Well, isn't that interesting. They waited until they didn't like the reports they received. They're very interesting people, let me just leave it at that. They have their own economic motives." He later tried to walk that back, saying he'd meant Samaria's *representatives* were gold diggers. In a way, that was even worse, as it implied she was too stupid to realize she was being manipulated by greedy lawyers.

At that same forum, McGinty also invoked the sacred secrecy of the grand-jury process. "We want to encourage people to come in, be able to tell the truth, without intimidation, in the search for the truth," he said. That would seem in obvious conflict with his vows of transparency, but no matter. As part of that search, he'd invited Samaria's attorneys to go find their own experts on police shootings.

That's how Roger Clark, the retired cop who got the toy gun stuck in his face, became involved. If a prosecutor presenting his own experts to a grand jury is uncommon, bringing in experts hired by the victim of a shooting is unprecedented. "It puts the victim in the unusual position of having to be the advocate," says Earl Ward, one of the lawyers for Tamir's family. "No, *unusual* is too light: I've never heard of it. In my 30 years of experience, this is the first time."

In more than 20 years, Clark had testified once as an expert before a grand jury, but never as one retained by the dead person's family. And Jeffrey J. Noble, another consultant hired on behalf of Tamir, had never done so at all. He was a cop for 28 years, retiring as deputy chief of the Irvine, California, police department in 2012. He wrote chapters for police textbooks on tactical recklessness and the notorious code of silence among officers; co-wrote a book on internal-affairs investigations; and, as a consultant, has reviewed hundreds of use-of-force cases. As a cop, he also used deadly force.

Noble knew Clark only by professional reputation and in fact had disagreed with him in another use-of-force case. But he agreed that the shooting of Tamir was unjustified, and for the same reasons. McGinty's experts focused only on the fraction of a second when Loehmann fired: a police officer only a few feet from a five-foot-seven 195-pound person who matched the description of a man reported to have a gun who was reaching into his waistband. If all of that were true—though the part about where Tamir's hands were and what they were doing is in legitimate dispute—it was reasonable for Loehmann to fear for his life, according to Sims, Crawford, and Katsaris.

But the few seconds *before* that, Noble argued, were just as important, both legally and practically. Under accepted police standards, Loehmann never should have been that close to Tamir that quickly. When they entered the park, the officers saw, or should have seen, one person, alone, not threatening anyone. There was no need for Garmback to rush him. "Reasonable police officers responding to a man-with-a-gun call," Noble wrote in his report, "would have stopped their vehicle prior to entering the park to visually survey the area to avoid driving upon a subject who may be

armed. This serves not only to protect the officers, but also serves to protect others who may be in the area and provides both time and distance for the officers to evaluate the situation and develop a plan."

Noble's function, admittedly unusual, was simply to give the grand jurors another learned perspective. Neither his opinion nor those of Clark, Sims, and the others could be used to convict or acquit anyone. "As an expert," Noble says, "my job is to educate." A grand jury is not contentious. Witnesses are almost never cross-examined, and normally there's no time, anyway. A typical grand jury in Cuyahoga County churns through 50 cases a day, mostly on little more than the word of a police officer. Noble expected to present his findings, answer a question or two, and be done.

Noble was retrieved by assistant prosecutor James Gutierrez and led to the grand-jury room, where 14 jurors sat in comfortable chairs around tables arranged in a U. Gutierrez took a seat in the center.

Matt Meyer sat on Noble's right. Noble was sworn in. Then, he says, "it devolved pretty quickly. It was an attack from the minute I walked into the room." Noble says Gutierrez and Meyer tag-teamed him with questions, talking over each other and him. Early on, one of them declared more than asked, "You're getting paid to be here, right?"

"Hey, wait, your experts are getting paid, too," Noble said.

"You don't know that."

He says he was asked if it "would be in the family's best interest if there was an indictment." He was reminded, as if he were a simpleton, that the grand jury had to be exceedingly conscientious. "Justice is about proving that some are not guilty," Meyer said. "These officers have rights, too."

Well, yes, but it's not the prosecutors' job to prove that to a grand jury. "I've never had to fight so hard to defend myself in the midst of a presentation," Noble told me. "And I've definitely never seen two prosecutors play defense attorney so well."

The hostility toward Noble, he realized, was part of a piece, reducing him to a character—hired gun for vengeful family and greedy lawyers trying to ruin brave cops—in a story that had already been laid out for the grand jurors. Tamir, as would later happen with Clark, repeatedly was referred to as an active shooter. Sandy Hook and San Bernardino (which had happened five days earlier) were both invoked. Video was projected of Tamir playing with the pellet gun earlier in the day, juxtaposed with video of kids playing basketball inside the rec center. For Loehmann and Garmback, only what they knew in a single blink of time was relevant. But for the dead kid, his entire day was fair game, as was what other people were doing inside a nearby building.

It was not difficult to figure out the prosecution's theory of the case, which was really a defense theory. Near the end of Noble's testimony, one of the grand jurors, a white lady he guessed was in her late 50s, had a question. "You're from California, and maybe they do things differently out there," she began. "But I'm a mom, and I would have wanted the police to protect my kid if he was playing in the rec center that day. He could have gone in there and killed all those people playing basketball."

The woman was very sincere. "She was not being mean-spirited at all," Noble said. "What I got out of that was the emotional level they'd been brought to."

That Tamir could not possibly have killed anyone seemed beside the point.

Loehmann and Garmback were not required to testify or answer any questions from prosecutors. No target of a grand jury can be forced to do so. Even if he was ordered to appear, he could still invoke his Fifth Amendment right against self-incrimination at any time. As a practical matter, then, a prosecutor won't invite a grand-jury target to appear. Why allow him to make a self-serving statement if the prosecutor can't cross-examine, can't poke holes in his story, can't point out contradictions and inconsistencies, can't pick at his credibility? How could the grand jurors realistically judge the veracity of those statements? On the other hand, a target has no real incentive to appear, either: Why risk saying something stupid that can be used against him later?

But at the beginning of December, both Loehmann and Garmback agreed to testify—sort of. Each man brought with him a written statement dated November 30, 2015, more than a year after Tamir was shot dead. Each officer read his statement to the grand jury.

Garmback's was self-serving, Loehmann's was self-aggrandizing, and both raised serious questions. For instance, both said they did not see Tamir seated at the picnic table until they were at least even with the swing set—that is, until they were a few yards away from the supposedly armed suspect they'd been sent to investigate. Were they always so lax in their visual surveillance? Both also agreed Garmback said, "Watch him, he's going to run," and that they were afraid Tamir was going to run toward the rec center. What, exactly, made them think Tamir would run? And if they believed that, why did Garmback approach from an angle that would almost force Tamir to bolt in that direction? Why not position the cruiser between Tamir and the rec center? Why stop next to him at all, instead of driving away from what might be a mortal threat?

Loehmann, meanwhile, testified that in his few months on the job, he'd already been "involved in many active-shooter situations." Really? How loosely does Loehmann define "active-shooter situation"? Do shots actually need to be fired? By the common definition, the last active shooter in Cuyahoga County was a man who shot his wife and daughters in a Cracker Barrel in 2012.

Loehmann said he and Garmback repeatedly yelled "Show me your hands" as they approached Tamir. (Garmback acknowledged the windows were up, which would have made shouting orders pointless.) "As car is slid *[sic]*, I started to open the door and yelled continuously 'show me your hands' as loud as I could," he said. "The suspect lifted his shirt reached *[sic]* down *into* his waistband. We continued to yell 'show me your hands.' I was focused on the suspect. Even when he was reaching into his waistband, I didn't fire. I still was yelling the command 'show me your hands.' "

Loehmann said he'd been trained to leap out of the car "because 'the cruiser is a coffin.' " He said he tried to get to the back of the cruiser. He said he and Garmback "were still yelling 'show me your hands.' With his hands pulling the gun out and his elbow coming up, I knew it was a gun and it was coming out. I saw the weapon in his hands coming out of his waistband and the threat to my partner and myself was real and active."

That's when he fired twice.

The most obvious of the many questions Loehmann's testimony raised was: How does that version square with a video showing that Loehmann pulled the trigger almost immediately after opening the car door? How fast can he yell "Show me your hands," and how much time will he give a suspect to comply?

There may be plausible, even credible, answers to those questions. But none of them were asked. Instead, after reading his statement, each officer invoked his Fifth Amendment rights.

That could not possibly have been unexpected.

Thanksgiving Weekend 2015, Earl Ward was told by Meyer that McGinty's office had hired a video expert to enhance and analyze footage from cameras around Cudell park, and that his report was going to be released—once again, the Saturday of a holiday weekend. But there was nothing new in the analysis, Meyer said, nothing of any consequence revealed in the enhancements.

That appeared to be true. The two videos weren't so much enhanced as synced and broken down into stills. The images were still grainy. They did not show Tamir pointing anything at the police, or even getting anything out of his trousers. But to McGinty's expert, who specializes in the software used to record video and in teasing out information hidden in the small variances between pixels, they clearly showed Tamir reaching into his waistband an instant before Loehmann shot him.

To Jesse Wobrock, an expert in biomechanics hired by Abady's firm, they showed that Tamir had his hands in his pockets when Loehmann fired, and that the upward movement of the boy's arms was a reaction to getting hit with a bullet, not a prelude to it.

To a layman, they are Rorschach blots. Stare at a still image long enough—as opposed to watching it flash past in a half a second as part of a moving series—and the brain can be convinced either way. But McGinty's version requires believing that a 12-year-old child rushed by two police officers reflexively reached for his toy gun. Wobrock's version requires only accepting that a body will jerk when it gets shot.

And there was, to Wobrock, one new thing in the enhancement. When others had reviewed the raw video, they'd calculated that 1.7 seconds elapsed between Loehmann getting out of the cruiser and firing. After seeing the individual images, Wobrock cut that to less than one second.

Wobrock appeared before the grand jury after Abady publicly complained about the way Noble and Clark had been treated. "My experience was probably more gentle than the others'," Wobrock says. "But they were acting in a way like they were defense attorneys for the cops. Their line of questioning had to do with attacking me professionally."

Meyer asked the questions. He showed images from the shooting, and videos that demonstrated that a person can pull a gun and shoot in less than half a second. He controlled those with a remote he'd stuck in his pants. "Today I have a remote in my waistband," he joked with the grand jurors, "and not a gun."

Mostly, Wobrock says, he was asked about his background in deciphering video code. He does not have any. Wobrock is an expert in forensic biomechanical engineering and kinematic analysis—how the body moves and reacts, particularly when it is being shot, beaten, or otherwise traumatized. "But if you have two eyes," he says, "you can see what was going on in the video."

Meyer brought up the civil suit pending in federal court—"Basically," Wobrock says, "that the mom was looking for money out of this thing"—which cast Wobrock as just another hired gun for the money-grubbers. Who could trust his opinion, this academic who didn't understand video-compression coding?

On the Monday after Christmas, McGinty announced that the grand jury had declined to indict either officer and that he had recommended no charges be brought.

The key evidence, both McGinty and Meyer said, was the enhanced video.

"You could actually see him draw his gun on this film," McGinty said.

Meyer, meanwhile, focused on a gray dot on the gazebo floor after Tamir had collapsed. That was the gun, he said. “For it to have fallen on the ground, it would have had to have been in Tamir’s hand,” he said. “Which means he would have had to have pulled that gun out.”

Those are both extremely debatable assertions. And neither, curiously, was mentioned when Meyer contacted Earl Ward a month earlier. Back then, there was nothing of any significance at all in that enhanced video.

Samaria Rice was the last witness to appear before the grand jury. She waited in the hallway of the courthouse while her daughter answered questions. Samaria didn’t want to tell me what her daughter was asked or how she answered, only that she was shaking when she came out. Her daughter had been there that day. Look at the video: Garmback and Loehmann watching a boy bleed to death, and she enters from the left. There’s no sound, but she’s screaming. “They killed my baby brother,” she shrieks. Garmback grabs her, takes her to the ground, handcuffs her, puts her in the back of the cruiser that’s next to her dying brother.

Samaria was still at home then. She was putting groceries away when two kids from the neighborhood banged on her door. “The police just shot your boy in the stomach,” they told her. She ran to the park, and the police told her she could stay with her daughter or go to the hospital with her son.

What could she do? She rode in the passenger seat of the ambulance.

The last time she saw Tamir alive, he had tubes stuck in his arms and his tongue lolled out of his mouth. And then he was dead. He was wrapped up like a tamale, she remembers, only his face showing, and she wailed and she sobbed and she tried to kiss him good-bye, but a police officer held her back. Her boy’s body was evidence and couldn’t be contaminated.

She sat before the grand jurors as a character in a script already written: Tamir had been acting all gangsta that day, Tamir had pulled a gun on the cops, Tamir could have killed everyone in the rec center. Any mom would have wanted the police to protect the children playing in the rec center and the park. Three experts said the police had no choice, said killing Tamir was a reasonable thing to do.

And Samaria? She was suing the city for wrongful death. Samaria wanted money. Samaria had a record: The day the police killed her son, she was on probation for selling weed. It didn’t matter that Samaria refused to ever live in the projects, that she’d moved to a white suburb so her kids could go to better schools and only moved back so her kids wouldn’t be the only black ones in class. It didn’t matter that she worried so much about her youngest two that she’d only recently let them off the porch to play.

The prosecutor asked her if she knew Tamir had a toy gun that day.

He asked her where he got that toy.

“The look he had on his face, it was almost like they were trying to blame me,” she said. “I’m saying in my head, *Why are they talking to me like that?* They were talking to me like I was a bad mother, like I gave him that BB gun.”

One of the grand jurors asked her what Tamir had been like. It was not an insincere question. But what does a mother say about the boy the police thought needed shooting? That he liked to draw and paint and make pottery at the rec center? That he helped his mother sweep and mop? That he liked

the ice cream and French fries at McDonald's and Cool Ranch Doritos and cereal, even if Samaria wouldn't buy him the sugary ones?

Or that he wasn't allowed to play with toy guns? Not even that cheap bright plastic one at the Dollar General?

What does any of it matter now?

Samaria wasn't surprised that Garmback and Loehmann weren't indicted. A prosecutor doesn't spend a year laying the groundwork only to screw it up at the end. Maybe it wouldn't sting as badly if McGinty had been forthright about it, if he'd made a decision and owned up to it and explained it, instead of dribbling out some parts and burying the rest in legal secrecy and ducking behind anonymous citizens, muddying rather than clarifying. But maybe not. No one was indicted, and no one would be.

Samaria knew the settlement was coming, and she wished it wouldn't be public, thought maybe she should move away, to Charlotte or Lexington, another city where people won't bother her at the gas station, at the store, on the street. People—strangers, a Cleveland police dispatcher—want to take selfies with her. "Once they recognize my face, it's 'Oh, let me give you a hug,' " she says. "Throwing themselves on my body, getting all in my personal space."

They mean well. But still. Sometimes they say, "Oh, you're that boy's mom."

Sometimes they say, "Oh, you're Rice's mom." And sometimes, because enough time has passed and memories have gotten foggy and all the stories begin to blur together, people stop and stare and try to remember. "Oh," they'll say, certain but not really, "you're Trayvon Martin's mom."

**Sean Flynn is a GQ correspondent.**