



# The Economist explains

## How a grand jury works

Dec 7th 2014, 23:50 by R.W

ON DECEMBER 3rd a grand jury in New York decided not to indict a white police officer who choked and killed an unarmed black man. Protest marches were quickly organised across America. The decision followed on from another grand-jury decision not to indict a white police officer for killing Michael Brown, an unarmed black teenager in Ferguson, Missouri. In that case, the officer claimed self defence and no video footage existed to show what had happened. But bystanders filmed the death of Eric Garner, the man in New York. The chokehold manoeuvre that was used has been banned by the NYPD since 1993. Several officers were at the scene; at no point was there a suggestion that they were in danger from Mr Garner. All this makes the decision by the grand jury not to indict the policeman particularly baffling. What is a grand jury, and how does it work?

America is one of the few countries to use grand juries. The Fifth Amendment requires that the federal legal system uses grand juries for all capital and “infamous” crimes. Grand juries are meant to weed out ill-conceived prosecutions and are particularly useful in cases of terrorism, public corruption and organised crime. Most Americans know little about the process, as the proceedings are not open to the public or to the media. Such secrecy is meant to ensure that investigations are free from outside influences and that witnesses are more forthcoming. State rules are different: only around half of the states use grand juries. And practices can vary widely. The size of a grand jury, for example, differs from place to place: in Missouri, it was made up of 12 people. In New York some 23 people sat on the jury.

In an ordinary trial there are two attorneys (one for each side), a presiding judge and a jury of 12 people who must convict beyond a reasonable doubt. Grand juries have an easier job. All they decide is if there is enough evidence to bring a case to trial—they do not determine whether or not someone is guilty or innocent. Unlike in ordinary trials no judge oversees a grand jury. Instead the presiding officer is the prosecuting attorney, who also instructs the jury on the law. This means that the prosecuting lawyer has a lot of

sway. In 1985 Sol Wachtler, a former chief judge in New York, told the New York Daily News that “district attorneys now have so much influence on grand juries that ‘by and large’ they could get them to indict a ham sandwich.” Nearly three decades on it is still rare for a grand jury not to return an indictment. According to one calculation, federal attorneys brought 162,000 cases before federal grand juries in 2010. Only 11 did not result in an indictment.

Police officers are rarely charged for on-duty homicides. In 2011 the Department of Justice found that the police, who are often responding to the threat of violence, kill roughly one person every day. But between 2005 and 2011, only 41 officers were charged with murder or manslaughter for on-duty shootings, according to research by Philip Stinson of Bowling Green State University. Even so it seems shocking that the video of the police officer using the deadly chokehold was not enough to warrant an indictment. One theory as to why the officer was not indicted is that local prosecutors work closely with the local police and prefer to remain on good terms with them. This means grand juries are more likely to trust the police, too. Some people are now calling for special prosecutors to preside over grand juries in cases against police officers. Others are calling for the complete elimination of the whole grand-jury system.

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