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## The Secret Darkness of Grand Juries

### A Broken System

by LAUREN C. REGAN

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Over the last 17 years I have represented dozens and dozens of clients who were subpoenaed to testify as witnesses at State and Federal Grand Juries regarding government investigations. A grand jury is a secret tribunal where a citizen is forced to answer questions by a prosecutor, often against their will. They are not allowed to have an attorney in the grand jury room to advise them while the questioning takes place. There is no Judge in the grand jury room to oversee the fairness or legitimacy of the proceedings. The prosecutor alone determines what evidence will be provided to the grand jurors, and that alone forms the basis of their deliberations and their determination regarding whether a felony indictment will issue. The prosecutor becomes the grand jurors' friend: he controls their bathroom breaks, meals, and whether they can return to their work, families, and lives. The prosecutor, a politically elected position, works very closely with police every day and generally exhibits bias toward police as a result of this familiar relationship. The prosecutor holds enormous power over the outcome of a grand jury proceeding.

As a lawyer for a subpoenaed witness, the primary concern is whether our client may incriminate himself by providing testimony to the grand jury. Because the grand jury is this secret process, the answer to this question is almost always yes, there is a possibility that this person could be compelled to testify and give information that might lead to criminal charges against that person. In these cases, the witness is advised that they must assert their Fifth Amendment right to remain

silent so there is no chance they will incriminate themselves of a crime. The only way that the prosecutor can overcome the Fifth Amendment right of a person is to impose immunity from any potential prosecution upon the subpoenaed person. If immunity is thrust upon the witness, their Fifth Amendment right is taken away from them and they are forced to testify. But, by providing immunity, the State acknowledges that they are no longer allowed to prosecute the witness for any crime related to the testimony sought.

It is with this background and understanding that I have been very suspicious about the recent grand jury proceedings regarding Darren Wilson, the police officer who murdered 18-year-old Michael Brown in Ferguson, Missouri. If a person was being investigated for murder, would they (in their right mind) voluntarily waive their Fifth Amendment rights and testify to a grand jury without immunity or some other type of agreement with the State that would assure the suspect officer that their testimony would not be used to prosecute them for one of the most serious felony crimes that exists in this country? If such a deal was not struck in the secrecy of the grand jury process, one would expect that the powerful police union or Wilson's own lawyers would have asserted his Fifth Amendment right. Because the prosecutor totally controls the questions asked and evidence provided to the grand jury, it was not surprising that as always, the State guaranteed the result they wanted—the police officer would get away with murder again.

Sure, the State felt compelled to hold a grand jury investigation given the public outrage and attention this police murder garnered around the world. And sure, inviting Darren Wilson to give a speech to the grand jury proclaiming his innocence and victimization gave some semblance that the State was undertaking a “real” investigation into the murder. Lauding the service of the grand jurors is a nice distraction as well, but of course it is not the jurors' fault that the grand jury system is broken. If the jurors are only allowed to touch the trunk and tail in total darkness, it might be hard to see the elephant in the room

And so, another cop killing never even sees the light of a court room, but instead lurks in the secret darkness of the biased grand jury room.

This scenario has played out too many times in the United States. Marginalized human (whether black, mentally ill, poor, etc.) is shot and killed by a law enforcement officer sworn to uphold the law and protect community safety. The Community reacts with horror, fear and anger at the murder of a victim they know or can relate to. The State provides some window dressing as if they were truly interested in whether this person—one of the few that has the lawful power to kill people under extreme circumstances—acted in conformance with the law. Despite the growing number of cop killings that occur in this country, it is suspect that the State's conclusion is overwhelming in favor of exonerating the actions of the police officer and affirming the right of the officer to punish a person with death. The community responds in outrage. Protests and direct action have become the only way people can vent the rage and resentment against a broken system of injustice. This public outrage then becomes further justification for increased State repression upon these communities—militarized police, National Guard troops, and the jailing of community leaders. The community often becomes torn and divided between those who cannot remain contrite in the face of such injustice, those who remain obedient to the tenants of Gandhian civil disobedience, and those whose privilege allows them to simply bury their heads in the sand.

Another young black man is dead. Another cop killer remains employed to protect and serve the community he has destroyed. A broken system is perpetuated without discussion about what might replace it. Instead of just replaying this same devastating tragedy, perhaps 'we the people' should be coming up with a societal solution that could earn the respect of the people.