The NAACP Legal Defense Fund’s request for a St. Louis County judge to consider a new grand jury and special prosecutor in the death of Michael Brown calls for an action that is without precedent.

No Missouri court has appointed a special prosecutor and empaneled a second grand jury over the objection of the local prosecutor whose first grand jury did not indict, legal experts say. Nor does there appear to be a precedent anywhere else in the country.

But that is what the LDF wants St. Louis County Circuit Court Presiding Judge Maura McShane to consider. In a letter last week, the organization called for McShane to investigate the grand jury run by St. Louis County Prosecuting Attorney Robert McCulloch and consider a new one. It criticized McCulloch and his prosecutors:

- for knowingly presenting perjured testimony,
- for giving confusing instructions on the law,
- treating Officer Darren Wilson with kid gloves when he testified.

Mae Quinn, a Washington University law professor who helped advise the LDF, knows of no precedent in Missouri or nationally for what she and the LDF want McShane to do.

“Have I seen a case like this. On all fours? No,” she said in a telephone interview. “But I tell students you always have to revisit the law and come up with new ways of anticipating new situations.”

Even if McShane were disposed to order a new grand jury – and the betting is she is not – it is unclear whether she has authority to take the action. In the past, prosecutors have been
Stephen Higgins, a former U.S. attorney and partner at Thompson Coburn, is skeptical of the group's request.

“I’m fascinated that people have constructed a narrative here that is getting so far from reality it is stunning,” he said in an interview. “I can’t imagine doing a new grand jury unless there is new evidence that is persuasive and material. If there were a video or a confession or a tweet or a comment by Wilson to a friend that amounted to a confession, that would be a material fact that could trigger a new grand jury.”

Nothing of that kind is alleged by McCulloch's critics, he said.

David Rosen, who prosecuted police as a former federal prosecutor, agreed that strong evidence relevant to guilt would be needed before there could be a second grand jury.

“Overturning a grand jury decision is something that courts are very loathe to do because the courts didn’t actually see the witnesses, they didn’t get a chance to judge the credibility of the witnesses, they didn’t know what went into the decision-making,” he said in an interview.

Still, the Legal Defense Fund has its supporters, including Richard Kuhns, an emeritus law professor from Washington University. Kuhns cites a laundry list of irregularities:

- knowingly presenting perjured testimony,
- confused jury instructions on use of force,
- “glib” advice on what constitutes probable cause,
- unclear instructions on how to consider Wilson’s affirmative defenses
- and the massive evidence dump.

“Having a fair process, particularly in light of the racial divide and structural racism in St. Louis County should be more important than whatever psychological discomfort Wilson may feel as a result of having the matter reconsidered,” he wrote in an email.

A group of seven citizens made many of the same criticisms last week in accusing McCulloch and his prosecutors of ethics violations.

But Quinn thinks the fund's approach of a new grand jury makes more sense than an ethics probe.

“Lots of folks are troubled by what they have seen in the grand jury transcripts and a lot of people are asking for extreme sanctions like ethical sanctions and removal from office. ... The request made by LDF strikes a middle path that allows for a review of the case and a second look recognizing that sometimes we zig when we should zag.”
Here are the main claims made by the LDF and its supporters:

**McCulloch and his assistants knowingly presented perjured testimony to the grand jury, especially from Witness 40.**

Legal experts agree that a prosecutor cannot knowingly present perjured testimony without taking remedial steps to make clear to the grand jury that the testimony lacks credibility.

The LDF cites McCulloch’s Dec. 19 radio interview on KTRS with McGraw Milhaven as proof he violated this rule. McCulloch said then, “There were some people who came in and, yes, absolutely lied under oath.”

McCulloch’s critics cite Witness 40 whose testimony supported Wilson’s account in most respects but who was generally seen as untruthful.

The fund’s letter notes that prosecutors played for the grand jury a tape of the FBI interview with Witness 40 during which “it became clear that the FBI and DOJ representatives believed Witness 40 was not truthful.” Witness 40 admitted to memory loss, that she had read newspaper accounts to get details of the shooting and had posted a racist internet rant.

But McCulloch’s critics say that playing the FBI interview tape was not enough to cure presentation of testimony they consider perjured.

Said Kuhns, “With Witness 40, the FBI interview, which the grand jury heard, made it pretty clear that Witness 40 couldn't have gotten out of the apartment complex the way she said she did. … Can we assume that the grand jurors fully appreciated and understood the FBI interview?”

Higgins, the former U.S. attorney, disagreed. “It is completely immaterial to the outcome,” he said. “McCulloch made a commitment to put all of the evidence before the grand jury to answer his critics who said he was biased. They would have to show it had an effect on the outcome.”

**McCulloch's assistants gave confusing instructions to the grand jury on police use of deadly force.**
Just before the Wilson grand jury began deliberating, the two prosecutors gave the grand jurors an unusual message: Ignore the Missouri law giving police officers broad power to use deadly force.

There was a good reason for Assistant Prosecuting Attorneys Kathi Alizadeh and Sheila Whirley to deliver the message. The Missouri law would allow an officer to kill an unarmed suspect fleeing a felony, even though the U.S. Supreme Court had said in the 1985 decision of Tennessee vs. Garner that shooting a non-dangerous fleeing felon is unconstitutional.

The Missouri Supreme Court changed jury instructions based on Tennessee vs. Garner, but the state legislature never changed the statute.

The LDF points that on the day of Wilson’s testimony, Sept. 16, Alizadeh distributed the Missouri law that she would later tell the grand jurors to ignore: “Disturbingly, the legal standard provided to the grand jurors immediately before Mr. Wilson testified was erroneous as it did not reflect either Supreme Court precedent or the updated Missouri jury instruction.”

The week before the grand jury deliberations began, St. Louis Public Radio reported on the uncertainty about the Missouri law. Michael A. Wolff, dean of the Saint Louis University Law School, said then that McCulloch would skew the grand jury process in favor of Wilson if he told jurors to follow the Missouri law giving officers authority to shoot unarmed felony suspects.

It was after the story with Wolff’s comment that the prosecutors changed the instruction.

Quinn said, “It was very unfortunate that the grand jury was provided very early on with a statute that contained a standard that would be considered unconstitutional and that, from the record appeared to be the only written law that they were provided through the weeks … questions were asked asking greater guidance … but then it was after weeks of the process (that there were new instructions) and even then the instructions were quite confusing.”

In a lawsuit filed last week, an unnamed juror sought court permission to speak publicly partly because “the presentation of the law to which the grand jurors were to apply the facts was made in a muddled and untimely fashion.”
But Rosen, the former federal prosecutor, says the bottom line is that the prosecutors fixed the instruction.

“If that incorrect standard had stood, there would be an issue. But they went in and corrected it. Was it confusing, yes it probably was. As long as you have made it clear enough, the fact that you made a mistake, that is not the end of the world.”

St. Louis Public Radio has requested copies of the written instructions of law given the grand jurors, but they have not been released.

McCulloch's prosecutors presented unclear instructions about the 'probable cause' standard.

Probable cause is far less than the "beyond a reasonable doubt" burden of proof in a criminal trial. It also is less than the "preponderance of the evidence" burden in a civil case, which is more than 50 percent.

“The prosecutors were positively glib about the meaning of probable cause,” said Kuhns, “telling the jurors that they knew what it meant from their prior cases. But did they? What had they been told before? … Assuming probable cause means 40 percent certainty, did the grand jurors realize that even if they were 59 percent certain of some critical fact favoring Wilson, there was probable cause?”

McCulloch's prosecutors misled the grand jurors on how probable cause factored into Wilson's affirmative defenses.

A person accused of a crime who presents evidence of an affirmative defense can be acquitted. Wilson’s affirmative defenses were self-defense and justifiable use of force by a police officer.

After several confusing exchanges earlier in the grand jury, Whirley gave this instruction: “To vote true bill, you must consider whether you believe Darren Wilson, you find probable cause, that’s the standard, to believe that Darren Wilson committed the offense ... and you must find probable cause to believe that Darren Wilson did not act in lawful self-defense ... you must also have probable cause to believe that Darren Wilson did not use lawful force in making an arrest.”

Marcia McCormick of Saint Louis University law school says the instruction on the defenses is particularly tricky because it’s easier in Missouri than in many other states for a defendant at trial to win on a defense.
“In Missouri … the defendant needs only inject the issue … point to evidence that supports the defense … and the prosecution has to prove beyond a reasonable doubt that the defense is not satisfied. It is understandable that the prosecutor's office, knowing that they would have this burden at trial, might be confused about its role in the grand jury's consideration of the law.”

The LDF's letter argues the confusion about the legal instructions had a cumulative effect. “By initially providing erroneous legal instructions that indicated that Mr. Wilson was authorized to use deadly force under circumstances outlawed by the Supreme Court for nearly 30 years; by following up with … confusing and misleading statements regarding the applicable law; and by expressing great uncertainty about the applicable legal standard by which the grand jury was required to weigh the facts, the prosecutors effectively ensured that no indictment could be returned against Mr. Wilson.”

Rosen, the former federal prosecutor, thinks it could be a can of worms to open the door to a grand juror publicly stating that he or she was confused by the legal instructions.

“Let’s assume we're going to allow this one juror to come forward and say I don't understand, then do we have to bring in everybody and find out what they thought? If there is just one juror, I don't think the court is going to be that impressed. You are not entitled to a perfect trial, you are only entitled to a fair trial. We are humans and we are going to make mistakes.”

**Would Judge McShane have the power to empanel a new grand jury and appoint a special prosecutor over McCulloch's objection? If not, would anyone else?**

The Legal Defense Fund and Quinn say McShane has the power because judges have broad discretion to remove prosecutors. A Missouri statute states a judge can remove a prosecutor who is “interested or shall have been employed as counsel in any case where such employment is inconsistent with the duties of his office, or shall be related to the defendant.”

The fund notes that the Missouri Supreme Court has said a court’s power to remove a prosecutor extends beyond the statute and is “instead a long-standing power inherent in the court, to be exercised in the court’s sound discretion.”
Peter Joy, a law professor at Washington University, doesn't think McCulloch would be considered “interested” under the statute.

“While the word ‘interested’ is not defined in the statute,” he wrote last month, “it likely refers to a recognizable conflict of interest. While some have criticized Bob McCulloch for being too close to the police or having a conflict due to his father’s death, neither of those would fit the ethical definition of the type of conflict of interest that would require someone to step down.”

Quinn called Joy’s analysis “pretty simplistic.” She said “interested” was broader than conflicts of interest. She also thinks that McCulloch and Alizadeh should be considered witnesses because both were involved beginning Aug. 9 and could be called before a federal grand jury in the federal criminal investigation.

If McShane refuses to start a second grand jury, most lawyers think no one would have legal standing to file a lawsuit to require a court to take up the issue.

Quinn, however, “could imagine entities saying they do have standing” to go to court, “anyone from the victim to some representative groups that say they represent the interests of the county.”

Most lawyers think that Gov. Jay Nixon could appoint a special prosecutor, but he has said he won’t. Quinn is hopeful, though. “Even though the governor previously said no to me and others that was before there was all this additional information.”

TAGS: BOB MCCULLOCH GRAND JURY DARREN WILSON MICHAEL BROWN FERGUSON
‘Flawed’ Bills Won’t Fix Confusion About Deadly Force

By WILLIAM FREIVOGEL • FEB 8, 2015

One of the key reforms, experts agree, that should grow out of the death of Michael Brown is changing Missouri’s statute giving police officers broad authority to use deadly force against unarmed suspects.

But the bills now before the Missouri Legislature could make matters worse rather than better, say legal experts. All of the bills are seriously flawed, say Saint Louis University law professors Chad Flanders and Marcia McCormick.

It’s not surprising that a cloud of confusion surrounds the reform because even leading criminal law experts can’t agree on what the prevailing law in Missouri was on August 9 when Officer Darren Wilson killed Brown on a Ferguson street.

The Missouri statute - Section 563.046 – states that a police officer can justifiably use deadly force to arrest a fleeing felon, even one unarmed.

But the U.S. Supreme Court ruled in 1985 in Tennessee vs. Garner that it is unconstitutional – an illegal seizure – for a police officer to shoot an unarmed, non-dangerous fleeing felon.

The Missouri Supreme Court paid attention and changed its jury instructions to conform with Garner, but the Missouri Legislature never changed the law.

What was the law when Wilson killed Brown?

Early in the grand jury proceedings in the Wilson case – when Wilson testified – prosecutors told the grand jury that the Missouri statute applied. In other words, an officer could use deadly force
to arrest an unarmed fleeing felon.

Weeks later, during the last week that the grand jury met, St. Louis Public Radio reported that criminal law experts disagreed about whether the grand jury should be told to follow the Missouri statute or the Missouri Supreme Court’s jury instruction that complied with Garner.

After that story and on the last day before deliberations, prosecutors changed the instruction. They told grand jurors to follow the Missouri Supreme Court’s jury instructions, not the Missouri statute they had given the jurors earlier.

That change made it easier to indict Wilson because it did not permit the use of deadly force merely to arrest an unarmed felon. But the grand jury still decided not to indict.

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**No harm, no foul?**

If the last-minute change in the instruction put Wilson at a disadvantage and he still wasn’t indicted, then what does it matter whether the change was correct?

For one thing, with the current confusion, neither police nor civilians know where things stand.

In addition, critics of St. Louis County Prosecuting Attorney Robert McCulloch say the confusion made a difference during grand jury deliberations. The transcript of the grand jury proceedings shows that grand jurors were confused when the instruction on deadly force was changed, they say.

On Friday, Nov. 21, just before the grand jury started deliberating, Assistant Prosecuting Attorney Kathi Alizadeh told grand jurors to “fold... in half” the instruction she had given them weeks earlier “so that you know don’t necessarily rely on that because there is a portion of that that doesn't comply with the law.”

When grand jurors persisted in asking questions, Assistant Prosecuting Attorney Sheila Whirley told the grand jurors, “We don't want to get into a law class.”

An unnamed grand juror filed a suit last month seeking permission to speak publicly about the confusion. And the NAACP Legal Defense Fund (LDF) called for consideration of a new grand jury and special prosecutor partly because of the confusion about the instruction.
How confusing were the instructions?

In response to a Sunshine Act request by St. Louis Public Radio, McCulloch released last month five-pages of written legal instructions given the grand jurors. These written instructions were not released with the transcripts in November:

Jury Instructions by St. Louis Public Radio

The written instructions on deadly force are essentially the same as the Missouri Supreme Court instructions. In other words, they are consistent with the Garner decision and inconsistent with the Missouri statute.

In addition to the deadly force instruction, the written instructions included the laws that Wilson could have violated (murder and manslaughter); the laws Brown could have violated (assaulting an officer); and defenses Wilson could claim, such as self-defense and proper use of force.
But release of the written instructions hasn’t caused McCulloch critics to back off their criticisms. Richard Kuhns and Mae Quinn, law professors at Washington University, say that instead of just laying out the statutes, prosecutors needed to put meat on the bones so the jurors could understand the law.

“This type of skeletal instruction may be adequate for the run-of-the-mill, 15-minute presentation of a case where the prosecutor is seeking an indictment and provides the grand jury only with evidence favorable to the prosecution,” wrote Kuhns. “The weeks-long, seemingly haphazard dump of conflicting evidence on the Wilson grand jury, however, should have required more. Like typical instructions to a trial jury, the Wilson instructions should have provided a structure for the grand jury’s deliberations by explaining how the various crimes and defenses are related to each other and to the evidence.”

Quinn said the instructions “seem to be quite confusing, particularly when there has been so much evidence presented and theories of the case presented it is hard to discern how these instructions are to be meaningfully used when applied to that evidence. I’m particularly struck by the lack of explanation for burdens (and) probable cause.”

Kuhns, too, thought that a glaring omission from the written instructions is what constitutes probable cause.

“Probable cause is a reasonable possibility, something less than beyond a reasonable doubt and even less than a preponderance (50 percent) of the evidence. Let’s say, just for the sake of illustration, 40 percent probability.…With respect to self-defense, assume that the grand jurors were 60 percent certain that Wilson reasonably feared for his life. The grand jurors’ 40 percent belief that Wilson may not have reasonably feared for his life establishes probable cause that he did not act in self-defense.”

St. Louis Public Radio checked with McCulloch’s office to see if there was a written instruction on probable cause but has yet to receive a response.

Two former federal prosecutors in St. Louis – former U.S. Attorney Stephen Higgins and assistant U.S. Attorney David Rosen – have emphasized, though, that any confusion or mistake in the grand jury process would have to be so serious that it would be “prejudicial,” meaning that it would lead to a different outcome.

Since the change in the instruction made it easier to indict Wilson, not harder, this is a difficult standard to surmount, legal experts say.
Were the prosecutors right in the first place?

In the past few weeks, as criminal law experts have looked more closely at the instructions, a surprising consensus has emerged: The prosecutors were right in the first place. The Missouri statute allowing officers to use deadly force to capture unarmed fleeing felons was the instruction the grand jurors should have received.

This seems odd in that U.S. Supreme Court decisions trump state law. Shouldn't Garner trump the Missouri statute? The answer is no, experts say. Garner was a civil case; the grand jury investigation of Wilson was criminal. A state doesn't have to make all police misconduct that violates the constitution a crime.

But shouldn't the Missouri Supreme Court jury instruction that followed Garner trump the Missouri statute? Michael Wolff, dean of Saint Louis University law school and former chief justice of the Missouri Supreme Court, says yes. But Wolff is in the minority.

Democracy and federalism

The LDF's challenge to the grand jury instructions attracted the national attention of criminal law experts, including Stephen E. Henderson, at Oklahoma University Law School. He says the Missouri Supreme Court made a mistake when it redrafted jury instructions to comply with Garner.

"Unfortunately, a well-intentioned Missouri Supreme Court erroneously redrafted jury instructions to reflect not the state criminal law, but rather the federal Fourth Amendment. And, doubly unfortunate, the prosecutors did not catch the mistake, but instead told the grand jury to ignore the actual state law."

"If Officer Wilson's conduct violated the Fourth Amendment, that could be cause for a federal civil rights lawsuit or, within the boundaries defined by the federal legislature, a federal prosecution. But it is the Missouri legislature, and not its supreme court, that decides whether that behavior constitutes a state crime. Federalism incorporates the concept of dual sovereigns."

Henderson adds, though, that the mistake is not a reason for a new grand jury. "Because the mistake was to the detriment of Officer Darren Wilson, making it harder to justify the use of deadly force, it is hardly itself cause for a second grand jury."

The mistake may, however, be a good reason for the Missouri Legislature to change the statute to conform with Garner, Henderson adds.
In Jefferson City

Flanders and McCormick agree with Henderson that the Missouri statute trumps the jury instruction and that Missouri should change the statute.

So far legislators have submitted about half a dozen bills. But all are flawed, say Flanders and McCormick.

A bill that has attracted attention – SB 42 sponsored by Jamilah Nasheed – has the most serious flaws, they say.

“Sen. Nasheed’s bill risks being both too hard on the police and too hard on potential victims of police force,” they say.

Too hard on police because it requires officers to shout a warning and exhaust “all other reasonable means” before using deadly force – a requirement that “encourages too much second-guessing of split second decisions.”

But the bill also fails to protect suspects in some situations. The bill would permit the use of deadly force against a person who committed a misdemeanor if the officer believed he “possesses” a gun, even if he hasn’t used it.

Flanders and McCormick have their own proposal, patterned after the Model Penal Code. It would limit deadly force to when an officer reasonably believes it is “immediately necessary to effect the arrest and also reasonably believes that the person to be arrested (a) has committed a crime which involved the use or threatened use of deadly force, or (b) there is a substantial risk that the person to be arrested will cause death or serious physical harm unless arrested without delay.”

“There is work to do and the imperatives both to get it right and to do it quickly, so citizens and the police know where they stand,” say Flanders and McCormick. “If we’re lucky, a clearer and better statute might prevent the next Michael Brown from happening.”
Justice Department investigation of Ferguson policing is just first step in instituting change

By WILLIAM H. FREIVOGEL • MAR 3, 2015

The federal civil rights case that the Justice Department is unveiling against the Ferguson Police Department offers the town great opportunities but also poses substantial costs and risks, experts say.

On the plus side, the “pattern or practice” investigation lays out a roadmap for fixing unconstitutional police practices that have resulted in a disproportionate percentage of blacks being stopped and locked up by police. Those practices came under scrutiny in the wake of the shooting death of Michael Brown and have lost the confidence of many African-American citizens.

In a number of cities, the Justice Department’s pressure to reform policing has been a factor in rebuilding trust between the police and the community after fatal police shootings.

But there also are potential downsides of the Justice Department action.

Ferguson would be the smallest town to undergo the expensive court compliance process since tiny Steubenville, Ohio 18 years ago. It could face bankruptcy and the spike in crime that often follows this type of consent decree, says former St. Louis County Police Chief Tim Fitch.

“Ferguson will not survive this financially,” he said. Fitch noted that East Haven, Ct., a town a little bigger than Ferguson, had to spend $3 million reforming its police department after a similar Justice Department investigation.

Ferguson’s size also diminishes the impact of the Justice Department action.
Thomas Harvey, whose ArchCity Defenders first called attention to the discriminatory impact of traffic stops and municipal court practices, welcomed the Justice Department’s validation of his group's complaint. But he also fears that by limiting the action to Ferguson, the Justice Department is falling far short of the reform that is needed.

“Without comprehensive and transformational change or the abolition of the municipal court system, individual reform in single municipalities will never truly change the lives of the most vulnerable among us,” he said.

Roger Goldman, an emeritus law professor in Saint Louis University law school, agreed that the Justice Department action would have limited reach if it is restricted to Ferguson. He said that colleagues who have studied the municipalities in north St. Louis County said “at least a dozen are worse than Ferguson.”

Fitch said he, too, thinks many other north county police departments have far worse practices.

“I was very critical of many of the north county police departments when I was a police chief because I was critical of the way they were funded on tickets. But Ferguson was never on my radar. I saw it as a professional department.”

**The cost of unconstitutional policing**

Samuel Walker, a University of Nebraska professor and expert on police accountability, thinks, however, that the Justice Department’s action against Ferguson could influence neighboring municipalities to clean up their unconstitutional practices.

“This could be a clear warning to these other municipalities,” he said. “There is a price for doing what you are continuing doing. It may have some real value in that respect.”

Walker said he had no patience for the complaints from cities that compliance with federal policing consent decrees is too expensive.

“Every city has screamed and moaned,” he said. “I have absolutely no sympathy. Somebody owns the house and for 25 years they don’t fix the roof or paint the walls and the front porch is collapsing and there’s a leak in the basement. There’s going to be a huge bill to bring up to market standards. They are paying for all the problems that should have been fixed in past years.”

Walker said that the statistical disparities that the Justice Department found in Ferguson’s policing “clearly are a pattern of huge disparities in the traffic stops and searches and convictions.”
I think that is pretty powerful data. The material on the emails was also damning.

By also implicating the practices of municipal courts in locking up a disproportionate percent of black citizens, the investigation “is broader than other Justice Department investigations I know about,” he added.

David Harris, a law professor at the University of Pittsburgh and expert on pattern or practice suits, agrees with Walker. Including the municipal court system in the Ferguson case "breaks new ground for the Justice Department," he added. "As far as I know this has never been one of the pieces of a consent decree.

"What stood out in the Ferguson investigation," Harris said, "was that when police stop people, African-Americans are much more likely to be searched than others and less likely to have contraband. This is a canary in a coal mine statistic. Police use authority differently depending on who they stop. When force is use disproportionately against one group, it raises red flags."

Like Walker, Harris is unsympathetic to the costs to Ferguson. "When a police department operates outside the Constitution there is a huge cost, not on the police department, but imposed on people who live and go through that place. So the fact that they will be on the hook for changing their police department shouldn't be a reason not to."

Ferguson's argument on cost is especially weak because "the municipal court system was used to raise money by this biased enforcement. When you are making your numbers on the backs of poor people, when it comes time to fix unconstitutional practices you have no argument."

**Reaction to Rodney King**

The frustrations with holding Los Angeles police accountable for the beating of Rodney King led to passage of Section 14141 of the Violent Crime and Law Enforcement Control Act of 1994.

The law empowers the Justice Department to sue law enforcement agencies where it finds a “pattern or practice” of unconstitutional police behavior.

From one standpoint, the law is laughably inadequate for the scope of the problem, lawyers say. The Justice Department has brought an average of three cases a year over the past 20 years, which is about 0.02 percent of the 18,000 police and sheriffs departments in the country.

On the other hand, the number of pattern or practice suits has grown rapidly under Attorney General Eric Holder. His department has pursued more than 20 cases since 2009.

Fitch, the former St. Louis County chief who has studied these cases has found that there often is an increase in crime after police reform is put into place. He points to Cincinnati, Prince George's County and Seattle as examples, although Cincinnati's increase in crime has leveled off.
Already, Fitch said, crime in St. Louis County is up 30 percent in the first two months of 2015. The reason, he thinks, is the police who are under criticism cut back on discretionary policing that can prevent crimes.

Although Fitch agrees that citizen confidence in police can increase as a result of reforms like Cincinnati’s, he thinks Holder has gone too far in federalizing police.

**Some successes, some failures**

In some places, Justice Department intervention has failed. Detroit and Oakland are examples, says Walker, the police accountability expert. In Detroit the court monitor had an affair with a city official and in Oakland there has been little progress over a dozen years.

A Justice Department consent decree in Cleveland was closed out after the police made some reforms. But this past fall the Justice Department found widespread unconstitutional use of force and dramatic violations of police chase policies.

Pittsburgh, in 1997, was the first city that the Justice Department targeted with the new law. An independent study found substantial progress in the first years of the reform, despite opposition from the rank-and-file officers who bridled at the ability of career criminals to file anonymous complaints.

But a new mayor removed the police chief who had supported police reform. Under a subsequent chief, Nate Harper, the department slid backward and Harper himself ended up pleading guilty to federal tax fraud charges.

Harris, the University of Pittsburgh expert, says that that the pattern or practice case in Pittsburgh illustrates that “the biggest problem with pattern or practice cases is sustaining them.”

“Pattern or practice is the best tool out there because it deals with systemic change,” he said in an interview last fall. “But it still has shortcomings because you have to have someone who keeps after it.”

Walker agrees. “My conclusion is that federal intervention is appropriate for troubled departments … incapable of reforming themselves.”
Template for reform

The Justice Department’s pattern or practice cases usually result in consent decrees that run for five years and have similar provisions from city to city.

If a city like Ferguson doesn’t agree to a consent decree, the Justice Department would file a civil suit. It would not need to prove intentional discrimination but rather that practices had the effect of discriminating against African-Americans. Proving effect is easier than intent.

Usually cities agree to consent decrees rather than fight in court. The typical decrees call for:

- Change in deadly force policies to reduce the instances of deadly force;
- Early warning procedures to identify officers with frequent complaints filed against them or who frequently violate department rules;
- Civilian review boards to give civilian investigators subpoena powers to investigate and discipline officers;
- Increased mental health services to help officers confronted by mentally ill people;
- Prompt disclosure to community leaders of both a police shooting of a civilian and the officer’s name, unlike the delay that followed Wilson’s shooting of Brown.
- Video cameras on squad cars or officers.
- Court monitors to ensure follow-up.

It’s the court monitors that run into big bucks, says Fitch. Cities like Seattle have complained about having to pay big liquor and dinner tabs of monitors. “The monitor has his team of PDs, lawyers and consultants and that’s where the big dollars come in,” he said.

Key to success

Policing experts agree that the key to success is finding a way to institutionalize change.

“What happens when the consent decree goes away and the monitor goes away?” asks Walker. “Are the reforms embedded in policing? After all the excitement and initial energy fades, do these reforms stick?”

There were a number of reasons that reforms stuck in Cincinnati after a 2001 police shooting of an unarmed black teen. One reason is the city adopted an entirely new strategy of policing, problem-oriented policing, that brought officers and citizens together to solve crime problems.

John Eck, a criminologist at the University of Cincinnati, said the change in strategy put the police officers front and center in solving crime in the community. “This helped to bring about buy-in from the police,” Eck said.

Another key fact was that there was not only a federal case, but also a civil rights lawsuit filed on behalf of African-American men who had been killed by police. A strong federal judge oversaw
implementation of the “collaborative agreement,” a blueprint for police reform.

This could be where Harvey and his ArchCity Defenders may have a role. Harvey said that all of the reform efforts so far – the Justice Department action, the reforms in the state legislature, the Ferguson Commission, Better Together – were just “nibbling around the edges. Because I know they are limited in what they can do, it is going to take continued litigation to bring about comprehensive reform.”

TAGS: POLICE  JUSTICE  FERGUSON

Related Content

Presidential task force backs independent prosecutors, more training to build trust in police
The Ferguson police department and municipal court engaged in such a widespread pattern of unconstitutional conduct that it lost the trust of the people, the Justice Department concluded after a seven-month investigation.

Attorney General Eric Holder called the report “searing.” It was full of accounts of blatant police and municipal court abuse of citizens, particularly African-Americans.

The attorney general suggested that the city’s unconstitutional behavior may explain why many citizens were ready to believe unsupported accounts about the deadly confrontation between Officer Darren Wilson and Michael Brown.

In its 105-page report the Justice Department accused the city of violation of the First Amendment’s right of free speech, the Fourth Amendment’s protection against unjustified stops and searches and the 14th Amendment’s promise of fair and equal justice.

It concluded:

- Ferguson police often arrested citizens who questioned police actions or tried to record them with cell phones. The police also arrested protesters without cause. All this violated the First Amendment.
- Police stopped pedestrians and motorists without cause and then tried to write as many tickets as they could out of each stop. This violates the Fourth Amendment protection against unreasonable searches and seizures.
- The city operated its municipal court system to maximize revenue over public safety, with
city officials constantly urging the police to maximize fines and productivity. The result was unfair justice in violation of the 14th Amendment promise of due process and equal protection of law.

- The brunt of police and court misconduct fell on African-Americans. All of the police dog bites were in arrests of African-Americans. Ninety-six percent of those arrested for not appearing in court were black. Eighty-eight percent of all cases involving use of force were against black suspects. And blacks were far more likely to be searched than whites even though whites were more likely to be found with contraband.

Samuel Walker, a professor at the University of Nebraska and expert on police accountability, called the report "devastating."

It was "even more powerful than I had anticipated, particularly with regard to the racist emails, which speak volumes about the culture of the department, and the explicit commitment to use law enforcement for revenue. People from St. Louis have told me that more than a few municipalities do that, but I did not know that it was explicit as the report documents.

“I was also pretty stunned by the open and seemingly routine manner in which whites were given breaks by the courts,” he added.
Required reforms

The report laid out 26 steps that the city needs to take to remedy the unconstitutional conduct. Many of those steps are likely to become part of a consent decree or a court order requiring the Ferguson to end unconstitutional practices.

Half of the steps require police reforms and the other half municipal court reforms. Ferguson is the first Justice Department “pattern or practice” case that requires not only reforms by law enforcement officers but also by court officials.

Among the reforms demanded by the Justice Department are:

- **True community policing** where police work together with the community. Ferguson police had a minimal involvement with the community, the report said.
- A fundamental **change in the way police stop, search and ticket citizens**, including an end to the abuse of vague, unconstitutional laws like “failure to comply” with a police order.
- **Meaningful review of the use of force by officers.** Currently, police and supervisors almost entirely ignore the procedures for reviewing the use of force. The result is that officers frequently misuse Tasers and pull their pistols without justification.
- **Training for officers in unbiased policing** as part of improved training so that officers know the legal rights of citizens.
- Adoption of meaningful **measures for punishing police officers for misconduct.** The report found that supervisors would seldom punish officers for blatant abuses of citizens’ rights.
- Recruitment of a **more diverse police department** that increases not only the number of African-American officers but also women.
- Restoring the legitimacy of the municipal court system by **making courts more transparent** and providing citizens with more information on how it functions.
- Ending the use of arrest warrants as a means of collecting fines and fees.
- Ending the **abusive practice of piling new fines on those who don’t show up in court** on minor traffic cases.
- **Reducing fines** for some violations to the lower levels charged by neighboring municipalities.
- Fixing bond and fine assessments so **people won’t end up in jail** when they are unable to pay court fines.
- **Close cases** that are based entirely on the failure to appear in court.
A litany of abuses

The Justice Department report was punctuated by stories of police abuse of citizens, particularly black citizens. Here are a few:

- A 32-year-old black man cooling off in his car after playing basketball was confronted by a police officer demanding his Social Security number. The officer accused the man of being a pedophile because he was parked near a park. The officer arrested the man at gunpoint for eight violations, including “making a false declaration” for giving his first name as Mike instead of Michael. The man said he lost his job as a contractor for the federal government because of the charges.
- An African-American woman is still paying fines that resulted from a 2007 incident when she parked her car illegally. The initial fine was high, $151, and she couldn’t afford it. Additional fees were piled on top for failing to appear in court. Now, after having paid $550 she still owes $541.
- Police rounded up a group of six black youths in response to a report that one suspect was selling drugs. In other words, there was no reason to stop the group of six as part of an investigation of a lone drug seller.
- Police ordered two teen girls who got into an altercation to go to their homes and not come...
out. When the girls got into another dispute later in the day, police arrested them for failing to comply with the order, even though they had no right to order the girls to stay in their homes.

- Officers who were supposed to pick up one man at the police station stopped another by mistake and demanded identification. When the man extended his identification toward the officers, the officers said it was an assault and locked him up for failure to comply and resisting arrest.

- In July, 2012 police arrested a business owner who objected to a Ferguson officer’s decision to stop her employee near the store. The officer stopped the employee for “walking unsafely in the street” as he returned to work from the bank. When the business owner came out of her shop three times to protest the stop, the officer arrested her for interfering with an arrest. That violated the business owner’s First Amendment rights, the report said.

- In September 2012, an officer stopped a 20-year-old African-American man for dancing in the middle of a residential street. The officer checked the man for warrants and told him he could go. The man responded with profanities and ended up arrested for "Manner of Walking in Roadway."

- In June 2014 an African-American couple ended up in jail after allowing their child to urinate in the bushes near a playground. An officer threatened to cite them for allowing their children to expose themselves. The mother then began recording the officer on her cellphone and he became irate, declaring, "you don’t videotape me!" Both ended up getting arrested. The same officer arrested the driver of a truck who didn’t respond quickly enough to a command that he put his cellphone on the dashboard because it was a threat. The charge was failure to comply.

- On Feb. 9, 2015, police arrested several people protesting outside the Ferguson police station on the six-month anniversary of Michael Brown’s death. Video shows the protest was peaceful, but two Ferguson police cards sped up to the scene an officer announced, “everybody here’s going to jail.”

- More than 20 officers used force to break up a disturbance at a high school, but their cursory use of force report didn’t name the officers involved or explain the justification.
Municipal courts

The report contained a devastating criticism of the municipal courts. It criticized city officials for putting pressure on the police to raise more money from traffic stops, and it sharply criticized Judge Ronald Brockmeyer for irregular practices.

The report said, “City officials routinely urge Chief (Thomas) Jackson to generate more revenue through enforcement. In March 2010, for instance, the city finance director wrote to Chief Jackson that ‘unless ticket writing ramps up significantly before the end of the year, it will be hard to significantly raise collections next year. ... Given that we are looking at a substantial sales tax shortfall, it’s not an insignificant issue.’”

Then, in March 2013, the finance director wrote to the city manager: “Court fees are anticipated to rise about 7.5 percent. I did ask the chief if he thought the PD could deliver 10 percent increase. He indicated they could try.”

The pressure from above translated to officers on the street who were expected to keep up productivity, in other words traffic and ordinance violations that would result in revenue for the city.
The report said: “Oficer evaluations and promotions depend to an inordinate degree on ‘productivity,’ meaning the number of citations issued. Partly as a consequence of city and (police) priorities, many of3cers appear to see some residents, especially those who live in Ferguson’s predominantly African-American neighborhoods, less as constituents to be protected than as potential offenders and sources of revenue.”

Brockmeyer suggested the creation of additional court fees, “many of which are widely considered abusive and may be unlawful,” the report said.

The judge’s performance was criticized by other city of3cials, but he held onto the job because he was a money maker.

“The city manager acknowledged mixed reviews of the judge’s work,” the report said, “but urged that the judge be reappointed, noting that ‘[i]t goes without saying the city cannot afford to lose any efficiency in our courts, nor experience any decrease in our fines and forfeitures.’”

At times Brockmeyer went so far as to order a defendant locked up for refusing to answer questions, the report said.

The court was tough on African-Americans, but not on court employees of nearby municipal courts.

“It is clear that writing off tickets between the Ferguson court staff and the clerks of other municipal courts in the region is routine,” the report said. “Email exchanges show that Ferguson officials secured or received ticket write-offs from staff in a number of neighboring municipalities.”

For example, Brockmeyer got one of his own red-light tickets written off. The report gave this account:

“In October 2013, Judge Brockmeyer sent Ferguson’s prosecuting attorney an email with the subject line ‘City of Hazelwood vs. Ronald Brockmeyer.’ The judge wrote: ‘Pursuant to our conversation, attached please find the red light camera ticket received by the undersigned. I would appreciate it if you would please see to it that this ticket is dismissed.’”

The prosecuting attorney also was prosecutor in Hazelwood and responded agreeably. “I worked on red light matters today and dismissed the ticket that you sent over.”

The report concluded this ticket fixing was another example of racial bias. “City officials’ application of the stereotype that African Americans lack ‘personal responsibility’ to explain why Ferguson’s practices harm African Americans, even as these same City officials exhibit a lack of personal — and professional— responsibility in handling their own and their friends’ code violations, is further evidence of discriminatory bias on the part of decision makers central to the direction of law enforcement in Ferguson.”

Holder emphasized that the Justice Department would seek to extend reform of the municipal
justice system to “surrounding municipalities.” He said “surrounding municipalities” twice.

But there is nothing tangible in the Justice Department report about how it would bring in the other north county municipalities, which experts say are worse than Ferguson.

This is one of the concerns about the Justice Department action that has been voiced by Thomas Harvey, head of ArchCity Defenders, which brought the municipal court abuses to light.

“I have no idea what they intend to do,” Harvey said Wednesday after seeing the report. “We’re going to keep litigating the matter in all of the towns where we have plaintiffs.”

Originally published March 4, 2015, and updated to reflect "St. Louis on the Air" discussion.

Related Content

Justice Department clears Wilson of civil rights charges, calls for steps to counter police bias
The Justice Department has neither the authority nor the staffing to expand its investigation of unconstitutional police and court practices from Ferguson to surrounding municipalities, legal experts say.

But that doesn’t mean that the Justice Department is powerless. Nor is the Justice Department the only player that could bring about change.

ArchCity Defenders and Saint Louis University law professors have filed lawsuits against Ferguson and Jennings for operating “debtors’ prisons.” The Municipal Court Improvement Committee is pushing incremental changes in municipal court procedures. And bills sponsored by state Sen. Eric Schmitt, R-Kirkwood, could force the worst police departments out of business.
Attorney General Eric Holder said in announcing action against Ferguson that the Justice Department would press surrounding municipalities to fix their unconstitutional police and court practices, too. Lawyers and police say a dozen north county municipalities are worse than Ferguson.

But legal experts say the Justice Department can't just insist on compliance in all of the surrounding municipalities.

David Harris, a law professor at the University of Pittsburgh, says, "There is no way to drag another municipality into Ferguson's case. The investigation is of Ferguson. But what this will do is to communicate very sharply to these other municipalities what the limits are with the Department of Justice and if they want to avoid their own investigations they ought to fix these things."

Samuel Walker, a professor and police accountability expert at the University of Nebraska, agrees. Both he and Harris point out that the Special Litigation Section of the Civil Rights Division is a small operation that lacks the resources to expand its investigation of patterns of unconstitutional policing to neighboring municipalities.

"DOJ, as a practical matter, could not investigate all the jurisdictions in the metro St. Louis area," said Walker. "There are just too many, requiring too many DOJ people. Perhaps the best approach would be for Holder or the new AG to use the proverbial 'bully pulpit' and give a well-publicized speech about the problem and possible remedies – and do it in St. Louis. This would help to energize local civic leaders.

"Local civil rights and civil liberties groups should also immediately begin calling loudly for a comprehensive solution to the broader problem. I recommend a Miami-Dade/LA County solution where the county law enforcement agency begins contracting to perform law enforcement services for small municipal governments."

**Ferguson in the middle of the pack**

Stephen M. Ryals, a St. Louis County civil rights lawyer, says he has seen first-hand the experiences of some poor defendants in Ferguson's municipal court. In fact, he had his own run-in with Municipal Judge Ronald Brockmeyer – a run-in detailed in the report without naming Ryals.

"We had a trial and I was trying to cross-examine the officer," Ryals recalled. "The judge kept interrupting me. At one point I said, 'Judge, there's been no objection.' He went on and on about wasting everyone's time. He said something about grandstanding. I said, 'Judge, I object to you
characterizing my cross examination in that manner. He said, ‘Be careful what you say. I'll hold you in contempt and lock you up.’ It absolutely killed my adversarial zeal.”

But Ryals says that Ferguson isn't the worst of the north county municipalities. “No, I don't think they're worst,” he said. “They probably are better than some and not as good as most.”

Ryals already has heard court personnel in other municipalities talking about how they don't want to make the headlines like Ferguson.

“If I was in charge of one of these other municipalities that has not been targeted by the Justice Department, I think I'd be inclined to initiate a pretty careful review of my practices. I'd look at charging practices and the fine structure.

“Now that we have a template for what is good and not so good, with the imprimatur from the Justice Department, I think it will be easier for lawyers from other jurisdictions to mount challenges. You have ArchCity Defenders and Saint Louis University Law School who are already active and motivated to build on the Justice Department, so I'm hopeful there will be changes.”

Debtors’ prisons

ArchCity is the public-interest legal organization that led the way in bringing the abuses of municipal courts to public attention around the time that Michael Brown was killed in Ferguson last August.

Thomas Harvey, its director, praised the Justice Department for validating the group’s criticism of municipal courts. But he also said that solving Ferguson alone will not make much of a dent in the overall problem.

“Without comprehensive and transformational change or the abolition of the municipal court system, individual reform in single municipalities will never truly change the lives of the most vulnerable among us,” Harvey said.

Harvey said his group intends to continue its civil rights lawsuits. Last month, ArchCity and Saint Louis University Law School lawyers sued Ferguson and Jennings for running Dickensian “debtors’ prisons” where poor people are locked up if they can't pay court fines.

The class-action lawsuits on behalf of 15 citizens claim that the towns violated the constitutional rights of the citizens because the Supreme Court says people can't be imprisoned for failing to pay fines.
Harvey believes that the only way to fix the municipal court system is to abolish the municipal courts altogether. Brendan Roediger, a Saint Louis University law professor who worked on the debtor prison suits, put this way in a Tweet Wednesday:

“The municipal court system does not need to be fixed. It is fundamentally and intentionally oppressive. It simply needs to go.”

Frank J. Vatterott, the municipal judge in Overland who heads the Municipal Court Improvement Committee, says he has a message for Roediger: “It isn’t going to happen.”

Vatterott thinks the lawsuits filed by Harvey and Roediger are misleading.

“It tells this unbelievable story and it reads like that Charles Dickens novel about debtors’ prisons, but it never mentions the main fact that they are in jail because of they didn’t show up in court.

“Roediger goes for Defcon 4 right away,” adds Vatterott. “He’s a good guy, but we live on a different planet.”

Asked if he was surprised by the Justice Department report on Ferguson, Vatterott said he knows there are “unnecessary incarcerations for petty stuff”

Turning to the portion of the report that suggested ticket fixing among municipal court clerks, Vatterott said, “I had heard all of those stories before. They say clerks fix stuff in between themselves, and I’ve always heard that. But a traffic ticket is not an ax murder, and in the old days they were fixed all over the world.

“You can make a big deal out of it, but most prosecutors look at it this way: If you have a guy with a lot of points but the guy gets a ticket because he is late for mass or something, they let him pay a bigger fine and avoid the points.”

Vatterott says his committee is making modest reforms, but ones that can make “a big improvement in our courts.” Among them:

- An “amnesty” program in December allowed about 3,000 people to get out from under warrants. But that still is a small percentage of the estimated 200,000 warrants outstanding, he said.
- A new uniform fine schedule (see below) went out to municipal courts this week for their consideration. It would substantially lower fines in some of the smaller towns, Vatterott said.
High fines in Ferguson were a target of the Justice Department report.
- Community service may be proposed as an alternative for those who can’t pay their fines.
- Bail reform to enable municipality A, which is holding a person under a warrant from municipality B, to take the bond for B and release the citizen.
- A new notice on tickets would inform citizens that they won’t be arrested if they come to court and don’t have enough money to pay the fine. The Ferguson report said that many poor people don’t go to court because they fear they will be arrested. Vatterott acknowledged, however, that some municipal courts check the docket against outstanding warrants and arrest those with warrants when they arrive. So the new notice may not entirely solve the problem.
- Volunteer lawyers providing free advice could protect the rights of poor citizens. But Vatterott said his committee’s proposal for volunteer public defenders got a cold reception from municipalities, which thought the free lawyers would bring court to a standstill. Harvey also criticizes the volunteer defenders saying permanent paid public defenders are needed.

Vatterott has high hopes for a big grant the county is seeking from the MacArthur Foundation to set up a central municipal court office. This office could more effectively implement the bail and volunteer public defender proposals, he said.

The University of Missouri-St. Louis has been “chomping at the bit” to help in Ferguson, Vatterott says. It is helping to put together the grant proposal.

**Schmitt’s bill**

Roger Goldman, an emeritus law professor at Saint Louis University, says the most effective way to reform north county police departments may be an indirect one – Schmitt’s bill, Senate Bill 5, putting a lid on the percentage of revenue a municipality can raise from fines.

Schmitt’s bill could bankrupt some small municipalities that now collect up to 30 percent of the income from court fines; the bill would set a 10 percent lid by 2017.

Goldman said, "It’s too much to expect the federal government to come in and reform each of those small communities."

Instead, Schmitt’s bill "would be a much more effective way because you are going to put 30 or 40 out of business. That is much more efficient than saying, Ferguson has to do this and Pine Lawn has to do that."

Goldman notes that St. Louis County police...
took over policing in Jennings in 2011 and that since then serious crimes like homicides, stabbings and rapes are down by a third, based on state statistics.

Vatterott isn’t taking a position on Schmitt’s bill. But he is concerned about a couple of related proposals he says Schmitt is pushing. One would limit a person to being a municipal judge in just one town, and the other would bar criminal defense lawyers as judges.

“What do you want, someone who does railroad work?” asked Vatterott. “I think that a defense lawyer is more empathetic than a big guy with a corporate practice at Bryan Cave.”

![Proposed uniform fine schedule](image-url)

CREDIT INFORMATION PROVIDED BY JUDGE VATTEROTT | COMPILED BY DONNA KORANDO

**TAGS:** FRANK VATTEROTT ERIC HOLDER COURTS MACKS CREEK LAW ARCHCITY DEFENDERS

Related Content
Good recap. I think many people think Holder can just send an order and make things happen. Only a judge can do that. I wonder if there are going to be municipal courts if the judges shouldn’t be appointed by the Circuit Court and put up for retention, or appointed by the Governor and confirmed by the Senate? I’d also like to know the political affiliations, if any, of these municipal judges. No one in the media ever reports this, so I assume they are all Democrats like the rest of the cast of characters in the Ferguson saga.

State Sen. Eric Schmitt’s bill limiting the amount of a city’s revenue from traffic fines has passed the Senate and now must be considered in the House…would not trust him as far as I could move the moon
Steven Smith • 4 months ago
all of them need to go to jail

Steven Smith • 4 months ago
i hate this place
Experts say municipal court reforms are coming, but don't know how or what

By WILLIAM H. FREIVOGEL • MAR 10, 2015

The Missouri Supreme Court’s decisive and unexpected Ferguson reforms Monday - on top of the Justice Department’s devastating critique of the town’s municipal courts last week - have created momentum toward major reform of the St. Louis County municipal courts, experts say.

Brendan Roediger, a Saint Louis University law professor who has been active challenging municipal court practices, thinks enough momentum is building that the municipal courts may be abolished.

“I honestly believe that the momentum is heading toward abolition,” he said in an interview. “... People are starting to realize you can’t fix a system with 450 000 outstanding warrants and it’s
Thomas Harvey, whose ArchCity Defenders group has championed municipal court reform, agreed. “On March 9, 2015, changes that Saint Louis University School of Law and ArchCity Defenders have repeatedly called for came closer to reality,” he said in a statement. “…The Missouri Senate, the Missouri Supreme Court, and the United States Congress all have proposals before them to fundamentally alter the municipal courts and police.”

Frank J. Vatterott, a municipal court judge in Overland and head of the Municipal Court Improvement Committee, agrees there is momentum for change but doesn’t think it will go so far as abolition.

“I frankly don’t think a wholesale change like that is going to pass muster. I understand what Roediger is saying but he represents the poor in a small fraction of the courts. He doesn’t look at the 350,000 tickets that are paid every year. There is nothing wrong with the courts in Maryland Heights or Creve Coeur or Richmond Heights. Those courts work very well. Those cities should have the right to enforce their ordinances.”

Vatterott predicted that the Missouri Supreme Court would set standards for municipal courts to meet and that municipalities that fall short would see their cases transferred to St. Louis County. “But that will be like 10 municipalities, not 80,” he said.

**Missouri Supreme Court acts**

The Missouri Supreme Court’s statement Monday and a follow-up statement Tuesday outline a two-pronged action:

1. Further revisions of Rule 37 prescribing how the municipal courts are to treat ordinance violations. Earlier this year the court ordered municipalities to give poor people more time to pay fines without going to jail. The court reiterated Tuesday that it “continues to review specific recommendations for further changes to Rule 37.”

2. A set of “best practices for issues that are not well-suited to a one-size-fits-all rulemaking approach.”

Monday afternoon, the court abruptly transferred Missouri appellate judge Roy Richter to St. Louis County Circuit Court to hear all Ferguson municipal violations. (See Ferguson judge resigns, Missouri Supreme Court orders cases assigned to Appellate Judge Richter)

The decision came as Ronald J. Brockmeyer resigned as municipal court judge in Ferguson. See Ferguson pledges to work with new judge, will hire its own as well] The Justice Department had sharply criticized Brockmeyer for operating the court as a revenue machine and for seeking to have his own red-light camera case dropped by a nearby municipality.

**Another view of Brockmeyer**
Vatterott said it “is a very safe bet Ron was going to be told to step down if he didn't resign. … He soul searched it for several days. … He's had these death threats and all this hateful email. … He's got a family … I know he took counsel with another appellate judge, not Richter, who told him it wasn't worth it. “The Supreme Court hasn't had this situation before,” Vatterott added. “They have had individual naughty judges. But this is the first time they were going to remove somebody for how he operated his court.”

Vatterott defended Brockmeyer noting he was “a big hero in Vietnam. His leg was all shot up. When we started law school the very first day I remember somebody dropped off this tall man with crutches who dropped his books. That was Ron. He's has had a tough life.”

The Missouri Supreme Court clarified Tuesday that Richter is independent of Ferguson. “Judge Richter will not report to the city,” the court said in a statement answering questions from St. Louis Public Radio. “He is a state judge who will be hearing the city's municipal division cases and implementing policies and procedures to ensure that municipal division respects the rights of the individuals who come before it.”

The court made clear that Richter's role would not sideline St. Louis County Circuit Court Judge Maura McShane, who as presiding judge has oversight over the 81 municipal courts in the county. Vatterott’s committee reports to her.

“There is no reason to suggest he (Richter) and Judge McShane will not continue to work in collaboration with one another,” the court statement said.

**Supreme Court action a surprise**

Some of those active in municipal court reform were pleasantly surprised by the court’s strong action Monday.

Before the Justice Department report, Chief Justice Mary Russell had talked about the legislature and local municipalities taking the lead. Supporters of major reforms took hope from the court’s strong language Monday about the “extraordinary action” warranted to “restore public trust and confidence” in Ferguson and the court’s plans to examine “reforms that are needed on a statewide basis.”

Karen Tokarz, a professor at Washington University who has been active in proposing reforms, said the court was “to be commended for taking steps to restore public trust and confidence in the Ferguson municipal court division by assigning Judge Richter … to hear...
Ferguson's municipal cases going forward - and to implement any needed reforms to court policies and procedures in Ferguson ‘to ensure that the rights of defendants are respected and to help restore the integrity of the system.’”

Tokarz said Russell was right to highlight the importance of municipal court as Missourians’ first – and sometimes their only – impression of the legal system.

It may be time, she added, to abolish some or all of the small municipal courts in St. Louis County and send the municipal cases to St. Louis County Circuit Court.

“Given the myriad of problems, given the growing public mistrust and given the inefficiencies, consolidation into the circuit court has to be on the table. It may be time for the abolition of the small municipal courts in the name of justice and fairness and efficiency.

“But just because it may make sense to abolish the small municipal courts doesn’t necessarily mean it is legal or prudent,” she said. “The challenge is balancing local control with individual rights. And there seems to be a desire on the part of many to leave it to local levels of government or the legislature to try and fix the problems.”

Tokarz said she is researching whether the Missouri Supreme Court or the Missouri Legislature would have the legal authority to eliminate a municipal court set up by a municipality formed under terms of the constitution and relevant statutes.

“The action of the Supreme Court yesterday as to Ferguson suggests the court believes it has the power to make major changes, in some instances; but, whether that includes wholesale abolition of the small, municipal courts is an unanswered question.”

Case for abolition

Roediger, the SLU law professor, thinks that both the legislature and the Missouri Supreme Court have the power to abolish the municipal courts.

Roediger testified Monday before the Missouri Senate Judiciary Committee proposing that the legislature pass a bill that would transfer all municipal violations to St. Louis County Circuit Court unless a municipality chose to contract with the county regional municipal courts. There are three regional county municipal courts, all of which function well, he said.

He emphasized that he is not proposing the elimination of traffic law enforcement, just enforcement in properly operated courts. He also noted that Illinois does not have a separate system of municipal courts.

Roediger acknowledges that the state constitution provides for municipal court judges, but only those judges “provided by law.” That gives “free range” to the legislature to eliminate municipal judges,” he said.
During the Senate hearing on Monday, senators asked Roediger why the Missouri Supreme Court didn’t just fix the problem instead of the legislature.

Roediger agreed that the Missouri Supreme Court could make the changes by using its broad “superintending” power over the courts. But he said “it would be more appropriate as a long term solution for the legislature to act.”

One move that Supreme Court could make, said Roediger, would be to appoint a “special master” to recommend whether the municipal courts should continue to exist and what should be changed. A special master is a highly respected lawyer appointed by a court to study issues involving policy and legal questions.

Roediger and Vatterott agree that one of the needed reforms is to treat more municipal violations – such as failure to have license plates – as infractions for which there is no jail time. Then if a person fails to pay, the state institutes legal collection proceedings but can’t impose jail time.

**Cleaver proposal**

U.S. Rep. Emanuel Cleaver II, D-Kansas City, announced this week that he would introduce the Fair Justice Act making it a civil rights violation punishable by up to five years in prison to enforce criminal or traffic laws solely to raise revenue.

Cleaver said he was acting in commemoration of the 50th anniversary of the Selma voting rights march and in reaction to the Justice Department’s Ferguson report. He noted that Jennings also has been accused imposing fines on mostly poor, black defendants and that the practice is widespread around the country.

Harvey and Roediger applauded the Cleaver bill noting they had traveled to Washington last December to meet with member of the Congressional Black Caucus and discuss federal legislation.

“This legislation takes seriously the impact for-profit police and courts have on the poor and communities of color in America and proposes serious consequences for their continued use,” said Roediger.

Roger Goldman, an emeritus law professor at Saint Louis University, said that his top-of-the-head opinion is that Congress probably doesn’t have the authority to pass the bill as Cleaver outlined it.

“Just running a court system to raise money, just that alone I can’t believe would be enough to justify it constitutionally because how is that a violation of due process?”

He noted that the Supreme Court has been “very strict” in limiting Congress’ power to enforce due process requirements on the states through Section 5 of the 14th Amendment.
“Without some additional constitutional hook they couldn’t do it,” he said.
Amiablejak • 4 months ago
I witnessed a Ferguson officer help a woman who found out she had a warrant rather than arrest her. He told her how she could fix the problem, who to talk to, etc. This was last spring sometime.
It is not a wholesale loss in Ferguson. We need to clean house, but we don’t need to get rid of everyone.

4th Degree FreeMason by Decree • 4 months ago
Yes, I agree that stuff is such a mess and it is like that all over the country. Some people have warrants they don’t even know about and people even used their names. The minor ones need to be settled somehow and fairly. Some of the fine are way too high for people to pay anyway. Community service too, need to get on the ball and fix that. That is just a bad way to live with warrants over your head.
Why did the Justice Department conclude that 'Hands Up, Don't Shoot' was a myth?

By WILLIAM FREIVOGEL • MAR 24, 2015

Those previous widespread beliefs about what happened when Wilson killed Brown on Canfield Drive helped spark national protest. In light of the Justice Department’s recent reports, those beliefs are being re-evaluated. The New York Times public editor, for instance, has joined those
who recognize the problem with the original “hands up-don't shoot” narrative.

It’s easy to see how protesters adopted -- and the media repeated -- the “hands up” mantra. The majority of eyewitnesses - 22 - told authorities that Brown's hands were up when he was killed.

But DOJ investigators found the accounts of all 22 witnesses to be unreliable because other parts of those witnesses’ stories conflicted with physical or forensic evidence or with the accounts of credible witnesses.

Many of these witnesses denied incontrovertible evidence that Brown reached into the police car, struck Wilson in the face, was wounded by a gunshot inside the car, fled 180 feet, suffered no wounds in the back and then moved back at Wilson immediately before the fatal shots.

In many instances, the discounted witnesses repeated what they had heard from neighbors or on the news. Some witnesses admitted they made up stories so they could be part of a big event in their community.

Brown’s companion, Dorian Johnson, and friends quickly spread the word that Wilson had killed Brown execution style. An iPad recording and videos that captured conversations among the gathering crowd document the development of the false narrative.

When Attorney General Eric Holder released the Department of Justice report and a separate report documenting Ferguson's deeply racist and unconstitutional police and municipal court practices, he said that Ferguson residents’ experience with racist police and court practices prepared them to suspect the worst when Wilson killed the unarmed teen.

**To be part of something**

When confronted with the ways in which their accounts differed from evidence, many witnesses acknowledged that they had made up details they hadn't witnessed. Eight of the 22 eventually admitted they had lied about all or part of what they had claimed to see.

One admitted to be sitting in a flowerbed away from the shooting. Another acknowledged she hadn’t seen anything because she was smoking behind a dumpster.

Two of those who admitted lying said they just wanted “to be part” of something.
In addition to the eight who admitted lying, one woman admitted blacking out, a man admitted he may have hallucinated details and another woman broke into hysterics and was unable to give a cogent account.

Another witness had bad eyesight, another memory loss and psychiatric problems, another was fiddling with a cell phone camera and yet another was a regular protester who waited seven months before reporting anything and then admitted she was upset “Darren Wilson got away.”

The FBI concluded that this last account, by Witness 148, was fabricated in much the same way as the much publicized account of Witness 140 who had apparently invented a convoluted story to help clear Wilson.

Most of the rest of the 22 witnesses who said Brown’s hands were up gave accounts that were so at odds with physical evidence that they were not credible. Several swore that Wilson shot Brown in the back, even though there were no wounds in the back. Several said that Brown was kneeling and Wilson killed him execution style. Other witnesses claimed to see multiple police officers at the scene and multiple police cars.

None of that was true.

Credible witnesses

Sixteen witnesses gave consistent accounts that did not contradict forensic and physical evidence.

Of the 16, 10 said they saw Brown’s hands and that he did not have them up in surrender mode, although several of these credible witnesses described some movement of the hands.

Of the 10 credible witnesses who saw Brown’s hands, seven said he did not have his hands up in surrender. The other three said he briefly began raising them when he turned around after fleeing, but put them down and moved quickly toward Wilson.

The three eyewitnesses who saw Brown briefly raise his arms were part of an interracial family riding in a minivan. The daughter, 26, said that “for a second” Brown began to raise his hands as though he may have considered surrendering, but then quickly “balled up in fists” in a running position and “charged” at Wilson in a “tackle run,” while Wilson backed up.
Her mother, 51, who was driving the van, said Brown’s hands went up “for a brief moment,” but when Wilson told him to “get down” Brown put his hands down “in a running position.”

Another daughter, 31, said Brown briefly put his hands up but then put them down and began stumbling toward Wilson.

The father in the family, 45, said Brown’s arms briefly “flung out” as turned back toward Wilson, but Brown “did not have his hands up” despite what the neighborhood said.

Two of the other witnesses described Brown making a different motion with his hands as he turned back toward Wilson. They were a married, African-American couple watching from a nearby second-floor balcony.

Both said Brown looked down at his hands – one of which was bleeding -- but he did not raise them in surrender. The husband said that when Brown turned he looked down at his hand and put his hands out, palms up as if asking “What the heck?” before moving “quickly” back toward Wilson.

The DOJ report noted that a number of the witnesses who said that Brown had his hands up maintained that he fell to the ground with his hands still in that position. In fact, Brown had his left arm under him, consistent with Wilson’s account that he grabbed his trousers as he rushed back at him, causing him to fear he might have a gun.

In summary, the DOJ report concluded: There are no witnesses who could testify credibly that Wilson shot Brown while Brown was clearly attempting to surrender. The accounts of the witnesses who have claimed that Brown raised his hands above his head to surrender and said “I don’t have a gun,” or “OK, OK, OK” are inconsistent with the physical evidence.”

The rumor spreads

The Justice Department’s report describes how Dorian Johnson -- Brown’s companion designated as Witness 101 -- first ran from the scene and then returned at the urging of the Brown family.

“Witness 101 made multiple statements to the media immediately following the incident that spawned the popular narrative that Wilson shot Brown execution-style as he held up his hands in surrender;” the report concluded.

After the shooting, Dorian Johnson yelled “He just killed my friend” and ran home and changed his shirt so he would not be recognizable to police. Then he went to Brown’s grandmother’s home to tell her what had happened.

“With the encouragement of Brown’s family, Witness 101 went back out onto the street and gave an interview to the media,” the DOJ report recounts. Johnson’s account was at odds with much of the physical and forensic evidence.
Johnson later told the state grand jury that he had seen a female friend, Witness 118, standing on her balcony. Johnson and Witness 118 socialized weekly in the weeks before the shooting.

During his testimony, Johnson “acknowledged that he had discussed the incident with … Witness 118. … he was surprised that so many other witnesses came forward because Witness 118 was the only person he saw outside, and she was the only person who saw the incident from the ‘first shot to the last shot.’”

Witness 118, who denied talking to Johnson about what she had seen, was one of the eyewitnesses most often interviewed by the media, often adding details not mentioned in earlier accounts.

At first the 19-year-old said she missed the beginning of the encounter, but she later maintained she saw “the whole scenario play out” in front of her. She added new details about the confrontation at the car and said she saw Wilson shoot Brown repeatedly in the back, which was not true.

In the end the Justice Department concluded that “Witness 118 was not out on her balcony for the majority of the incident, and it is unknown at what point she actually witnessed the shootings, if at all.”

**Jefferson County contractors**

One of the biggest news developments was the widespread coverage of two white contractors from Jefferson County who seemed to validate the “hands up” mantra. They are Witnesses 122 and 130.

A much replayed CNN “exclusive” showed one of the contractors throwing up his hands as if repeating what he had just seen Brown do with his hands.

Chris Hayes, of MSNBC, one of the national reporters most doggedly pursuing the hands up story, replayed the video and interviewed a local reporter who had an exclusive interview with one of the contractors.

As it turns out the video was not captured “during the moments just after the shooting.” Clearly
The video depicts another person yelling, ‘He wasn’t no threat at all,’ as Witness 122 puts his hands up and says, “He had his fucking hands in the air.”

Two people claimed to investigators to have shouted – “He wasn’t no threat at all.” The FBI found that neither had witnessed enough of the encounter to know.

Nor was Witness 122’s account accurate. He claimed that three police officers were present during the shooting and that Brown was shot by the “heavyset” one. Wilson is not heavy-set and he was the only officer present.

The FBI also discredited other key elements of Witness 122’s account. It reported that both contractors “claimed to have witnessed bullets go through Brown and exit his back, as evidenced by his shirt ‘popping back’ and ‘stuff coming through.’ However, in his interview with federal prosecutors, Witness 122 explained that he thought that Brown was shot in the back and stumbled until he saw media reports about the autopsy commissioned by Brown’s family. After learning about that autopsy, he realized that Brown was not shot in the back and admittedly changed his account.”

Both contractors eventually recanted part of their stories, acknowledging they hadn’t seen Brown fall because a corner of a building obstructed their view.

The iPad

The person who recorded the video of the contractors had started recording after the gunshots stopped, putting his iPad in a ground-level window of his basement apartment. The videos he captured show the rumors spreading. The DOJ report said:

During those conversations, bystanders discussed what transpired, although none of what was recorded was consistent with the physical evidence or credible accounts from other witnesses. For example, one woman stated that the officer shot at Brown from inside his vehicle.
The SUV was still moving and then the ‘officer stood over [Brown] and pow-pow-pow.’ Because none of these individuals actually witnessed the shooting incident and admitted so to law enforcement, federal prosecutors did not consider their inaccurate postings, tweets, media interviews, and the like when making a prosecutive decision.”

The report described the major role that social media played in spreading the impression that many people had witnessed Brown with his hands in the air. Agents tracked down the people who seemed to claim on social media or TV that they had witnessed the shooting.

For example, one individual publicly posted a description of the shooting during a Facebook chat, explaining that Brown ‘threw his hands up in the air’ as Wilson shot him dead. A Twitter user took a screenshot of the description and ‘tweeted’ it throughout the social media site. When the SLCPD and the FBI interviewed the individual who made the initial post, he explained that he ‘gave a brief description of what [he] was hearing from the people that were outside’ on Canfield Drive, but he did not witness the incident itself. Similarly, another individual publicly ‘tweeted’ about the shooting as though he had just witnessed it, even though he had not.

“Likewise, another individual appeared on a television program and discussed the shooting as if he had seen it firsthand. When law enforcement interviewed him, he explained that it was ‘misconception’ that he witnessed the shooting. He spoke to the host of the show because he was asked if he wanted to talk about the shooting. In so doing, he was inaccurately portrayed as a witness.”

In its legal analysis, the DOJ summarized its conclusions: “Witness accounts suggesting that Brown was standing still with his hands raised in an unambiguous signal of surrender when Wilson shot Brown are inconsistent with the physical evidence, are otherwise not credible because of internal inconsistencies, or are not credible because of inconsistencies with other credible evidence.

“In contrast, Wilson’s account of Brown’s actions, if true, would establish that the shootings were not objectively unreasonable. … Multiple credible witnesses corroborate virtually every material aspect of Wilson’s account and are consistent with the physical evidence.

“Not only do eyewitnesses and physical evidence corroborate Wilson’s account, but there is no credible evidence to disprove Wilson’s perception that Brown posed a threat to Wilson as Brown advanced toward him.

DOJ’s conclusions about Ferguson witnesses

In its report about Darren Wilson’s killing of Michael Brown, the Department of Justice concluded there was not enough evidence to prosecute Wilson. The DOJ reached its conclusion in part based on witness testimony and statements. The DOJ found seven witnesses who remained consistent with the physical evidence, their own statements over time, and the other credible witnesses. Eight witnesses, the department said, neither completely helped or hurt the case against Wilson. But the largest group — 24 witnesses — the department discounted, because it said they contradicted the physical evidence or changed their stories significantly over time.
CORRECTION: A previous version of this graphic listed an incorrect number for witness 142, an incorrect "reason" for witness 132, and omitted witness 106. We regret the errors.

### Witnesses Materiaaly Consistent with Prior Statements, Physical Evidence, and Other Witnesses Who Corroborate That Wilson Acted in Self-Defense

<table>
<thead>
<tr>
<th>Witness number</th>
<th>Race</th>
<th>Sex</th>
<th>Encounter at Wilson’s car</th>
<th>Did Brown move back toward Wilson?</th>
<th>Did Brown have his hands up?</th>
<th>DOJ’s reason for discounting witness</th>
</tr>
</thead>
<tbody>
<tr>
<td>102</td>
<td>Bi-racial</td>
<td>Male</td>
<td>yes – wrestling</td>
<td>charged</td>
<td>no</td>
<td></td>
</tr>
<tr>
<td>103</td>
<td>Black</td>
<td>Male</td>
<td>yes – punched</td>
<td>moving fast</td>
<td>no</td>
<td></td>
</tr>
<tr>
<td>104</td>
<td>Bi-racial</td>
<td>Female</td>
<td>yes – hand in car</td>
<td>charged</td>
<td>briefly then balled</td>
<td></td>
</tr>
<tr>
<td>105</td>
<td>Black</td>
<td>Female</td>
<td>hands on car</td>
<td>running</td>
<td>briefly then down</td>
<td></td>
</tr>
<tr>
<td>108</td>
<td>Black</td>
<td>Male</td>
<td></td>
<td>charged</td>
<td></td>
<td></td>
</tr>
<tr>
<td>109</td>
<td>Black</td>
<td>Male</td>
<td>fight outside</td>
<td>wouldn’t stop</td>
<td></td>
<td></td>
</tr>
<tr>
<td>113</td>
<td>Black</td>
<td>Female</td>
<td>running</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Witnesses Who Neither Inculpate Nor Fully Corroborate Wilson

<table>
<thead>
<tr>
<th>Witness number</th>
<th>Race</th>
<th>Sex</th>
<th>Encounter at Wilson’s car</th>
<th>Did Brown move back toward Wilson?</th>
<th>Did Brown have his hands up?</th>
<th>DOJ’s reason for discounting witness</th>
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</thead>
<tbody>
<tr>
<td>106</td>
<td>White</td>
<td>Male</td>
<td></td>
<td></td>
<td></td>
<td>flung out</td>
</tr>
<tr>
<td>107</td>
<td>Black</td>
<td>Female</td>
<td>running/stumbling</td>
<td>briefly, then down</td>
<td></td>
<td></td>
</tr>
<tr>
<td>110</td>
<td>Black</td>
<td>Male</td>
<td>scuffle</td>
<td>not charging</td>
<td>looked hands</td>
<td></td>
</tr>
<tr>
<td>111</td>
<td>Black</td>
<td>Female</td>
<td>slow motion</td>
<td>looked at hand</td>
<td></td>
<td></td>
</tr>
<tr>
<td>115</td>
<td>Black</td>
<td>Male</td>
<td>scuffle</td>
<td>walking</td>
<td>fold across stomach</td>
<td></td>
</tr>
<tr>
<td>141</td>
<td>Black</td>
<td>Male</td>
<td></td>
<td>stumbling</td>
<td>no</td>
<td></td>
</tr>
<tr>
<td>114</td>
<td>Black</td>
<td>Female</td>
<td>tussling</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>129</td>
<td>Black</td>
<td>Male</td>
<td>scuffle</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>116</td>
<td>Black</td>
<td>Male</td>
<td>yes – arms in car</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Witness number</td>
<td>Race</td>
<td>Sex</td>
<td>Encounter at Wilson's car</td>
<td>Did Brown move back toward Wilson?</td>
<td>Did Brown have his hands up?</td>
<td>DOJ's reason for discounting witness</td>
</tr>
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<td>-----------------------------</td>
<td>-------------------------------------</td>
</tr>
<tr>
<td>101</td>
<td>Black</td>
<td>Male</td>
<td>Wilson grabbed Brown</td>
<td>no</td>
<td>yes</td>
<td>B, C</td>
</tr>
<tr>
<td>123</td>
<td>Black</td>
<td>Male</td>
<td>tussle</td>
<td>no</td>
<td>half-way</td>
<td>B</td>
</tr>
<tr>
<td>133</td>
<td>Black</td>
<td>Female</td>
<td>tussle</td>
<td>yes</td>
<td></td>
<td>Black-out</td>
</tr>
<tr>
<td>119</td>
<td>Black</td>
<td>Male</td>
<td>Wilson shot Brown</td>
<td>yes</td>
<td></td>
<td>Lied</td>
</tr>
<tr>
<td>125</td>
<td>Black</td>
<td>Female</td>
<td></td>
<td>yes</td>
<td></td>
<td>Lied</td>
</tr>
<tr>
<td>131</td>
<td>Black</td>
<td>Male</td>
<td></td>
<td>no</td>
<td>yes</td>
<td>A</td>
</tr>
<tr>
<td>112</td>
<td>Black</td>
<td>Male</td>
<td>one arm in</td>
<td>yes – unthreatening</td>
<td>part or all</td>
<td>A</td>
</tr>
<tr>
<td>135</td>
<td>Black</td>
<td>Female</td>
<td>yes</td>
<td></td>
<td>yes – scrunched</td>
<td>Eyes — A</td>
</tr>
<tr>
<td>124</td>
<td>Black</td>
<td>Female</td>
<td>yes</td>
<td></td>
<td>yes</td>
<td>A</td>
</tr>
<tr>
<td>127</td>
<td>Black</td>
<td>Female</td>
<td>rassling – hands out</td>
<td>no</td>
<td>yes</td>
<td>B</td>
</tr>
<tr>
<td>118</td>
<td>Black</td>
<td>Female</td>
<td>Wilson shot Brown in back</td>
<td>no</td>
<td>yes</td>
<td>Lied</td>
</tr>
<tr>
<td>122</td>
<td>White</td>
<td>Male</td>
<td>staggering</td>
<td></td>
<td>yes</td>
<td>D</td>
</tr>
<tr>
<td>130</td>
<td>White</td>
<td>Male</td>
<td>staggering</td>
<td></td>
<td>yes</td>
<td>D</td>
</tr>
<tr>
<td>142</td>
<td>Black</td>
<td>Male</td>
<td>conflicting</td>
<td>conflicted</td>
<td>conflicted</td>
<td>Lied — A</td>
</tr>
<tr>
<td>138</td>
<td>Black</td>
<td>Male</td>
<td></td>
<td>no</td>
<td>yes</td>
<td>B</td>
</tr>
<tr>
<td>132</td>
<td>Black</td>
<td>Male</td>
<td>fight</td>
<td>no</td>
<td>yes</td>
<td>Lied — A</td>
</tr>
<tr>
<td>121</td>
<td>Black</td>
<td>Female</td>
<td>Wilson grabbed Brown</td>
<td>walking</td>
<td>yes</td>
<td>Lied</td>
</tr>
<tr>
<td>126</td>
<td>Black</td>
<td>Female</td>
<td></td>
<td>yes</td>
<td></td>
<td>Memory</td>
</tr>
<tr>
<td>137</td>
<td>Black</td>
<td>Male</td>
<td>walking</td>
<td>yes</td>
<td></td>
<td>Lied</td>
</tr>
<tr>
<td>128</td>
<td>Black</td>
<td>Male</td>
<td>Wilson choking Brown</td>
<td>no</td>
<td>yes</td>
<td>Hallucinated</td>
</tr>
<tr>
<td>140</td>
<td>White</td>
<td>Female</td>
<td>Brown hits Wilson</td>
<td>charging</td>
<td>no</td>
<td>Fabricated</td>
</tr>
<tr>
<td>139</td>
<td>Black</td>
<td>Female</td>
<td>incoherent</td>
<td>incoherent</td>
<td>incoherent</td>
<td>Hysterics — D</td>
</tr>
<tr>
<td>143</td>
<td>Black</td>
<td>Male</td>
<td></td>
<td>yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>Race</td>
<td>Gender</td>
<td>Wilson shot</td>
<td>Brown</td>
<td>Lied</td>
<td>Waited 7 mo.</td>
</tr>
<tr>
<td>----</td>
<td>------</td>
<td>--------</td>
<td>-------------</td>
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<td>-------------</td>
</tr>
<tr>
<td>120</td>
<td>Black</td>
<td>Male</td>
<td>Wilson shot Brown</td>
<td>no</td>
<td>yes</td>
<td>Lied</td>
</tr>
<tr>
<td>148</td>
<td>Black Female</td>
<td>Wilson grabs Brown</td>
<td>no</td>
<td>yes</td>
<td>Waited 7 mo.</td>
<td></td>
</tr>
</tbody>
</table>

**Notes**

Reasons DOJ discounted witnesses:  
A — inconsistent accounts and/or inconsistent with physical evidence; B — inconsistent with physical evidence: said Brown did not move back toward Wilson; C — inconsistent with physical evidence: said Brown’s arms were never inside Wilson’s car; D — inconsistent with physical evidence: said Brown was shot in the back repeatedly.

Source: Compiled from DOJ report by Bill Freivogel  
Credit: St. Louis Public Radio
The bottom line is this: Dorrian Johnson’s version of events was a lie from the start. The
media, ALL of the media both locally and nationally failed in their responsibility to confirm that
things they reported as the "truth" actually happened. They failed miserably. Furthermore, the
Department of Justice, which had all but declared Darren Wilson guilty knew months in
advance that there was absolutely no truth to the accounts that backed up Dorrian Johnson’s
lies and then sat on that truth while the Grand Jury and local prosecutors and police were
being maligned in the local and national media. Then, instead of saying anything and letting the
public know the truth, the DOJ sat silently and watched as Ferguson was destroyed by
looters, thugs, and arsonists despite the fact that they knew the facts and evidence
completely exonorated Darren Wilson and they could have eased tensions by confirming their
agreement with the Grand Jury. Instead, they stood by silently and allowed the Grand Jury
process, local prosecutors and police to be savaged in the media. Then, when the DOJ finally
released the report, instead of stating their conclusions unequivocally they purposefully and
deceptively downplayed the exonoration and instead framed the release of the report as not having "sufficient" evidence to prosecute Wilson on civil rights charges. This dishonesty, deception, lack of professionalism and competence in reporting and informing the public of the facts by both the Department of Justice and the media is an enormous disgrace nearly rising the level of criminality given the millions in property damage, the many officers (black and

archon41  ·  4 months ago

The DOJ also found that Brown did in fact "strong-arm" those "cigarillos," and that Officer Wilson had identified him as a suspect. So why did Brown attack Wilson? Why are so many young, urban black males responding violently to attempts to detain them?

The DOJ report on Ferguson invites us to suppose that blacks are as attentive to the things that get one "pulled over" as their more affluent white counterparts, and just as diligent about promptly appearing in court to avert the issuance of warrants. Confronted with the issue of black crime rates, "progressives" react rather like cats thrown into a tub of icy water. They are outraged by the very mention of this line of inquiry, and protest that it reveals a "racist" frame of mind. They wear out creation insisting that the statistics showing that blacks engage in criminal misconduct out of all proportion to their numbers are the fruit of "profiling" and "selective enforcement." They don't really believe such flapdoodle, of course. When confronted by the "stats" showing that blacks commit murder some 6 to 8 times more frequently than whites (the great majority of their victims being black), our "progressive" brethren glibly fall back to the claim that blacks are driven to unlawful conduct by "economic inequality" and "white privilege." But since when have we authorized peace officers to inquire into "economic status" before deciding whether to enforce the law? One might as well attempt to reason with an angry cat.

Tyrell_Corp  ·  archon41  ·  3 months ago

I see. What explains this high crime rate among the black population?

archon41  ·  Tyrell_Corp  ·  3 months ago

What induced Mike Brown to think that he could get away with "strong-arming" those "cigarillos," and brazenly laying hands on the protesting clerk? Some would suggest that, had he not been denied adequate "walking around money" by "white privilege," he would not have found such measures necessary. But he had enough money for a wad of marijuana, described to the grand jury as the size of a baseball, didn't he? But whatever may have been going on in his noggin, most of us are simply not interested in financing the lifestyles to which the Mike Browns of this world think themselves "entitled."

If you think you have a point, spit it out.
I am getting tired of no one questioning the officer’s credibility in this situation. The article states he may have fired at Mike Brown because he grabbed his trousers to go for a gun. What in the world? Why would Brown go for the gun in the police vehicle but have one on him? Also, why aren’t more people questioning why Wilson didn’t wait for backup? He called for backup but the proceeded on his own in this instance. This tactical error cost someone his life. If Wilson hadn’t backed up his car in that intimidating manner, Brown might still be alive. But he wasn’t fired for that. Darren Wilson also claimed in the initial police report to have only fired once in the vehicle but told the grand jury he fired twice, but his credibility isn’t called into question over this. He also booked his own gun into evidence. This whole process was a sham.

Ted Seay – Guest • 4 months ago

Eric Holder’s (which is to say, President Obama’s) Department of Justice took everything you say into account in preparing their report, and decided none of it was germane to the final conclusion: “Hands Up Don’t Shoot” never happened, and Officer Wilson had no crime to answer for. Period.

TheWinterIsHere – Guest • 4 months ago

If you make the effort to look at the actual report and evidence, you’d have answers for all of this. I’m not going to regurgitate all of it for you. The process was done correctly, the outcome is just not what you want. There’s a difference.

Kjoe777 – TheWinterIsHere • 3 months ago

I will see your potential regurgitation and raise you several hundred comments in response to the smoking gun report on witness forty, from December 16th, as well as the report, itself. Very creative use of a witness with such a long, obviously documented, history, easily known that she was not even there, easily prosecuted, for that matter............McCulloch had to have had a reason for including her. I doubt if it was to provide balance.

TheWinterIsHere – Kjoe777 • 3 months ago

This really has nothing to do with my comment. The answers to her questions are in the DoJ report.
your comment has nothing to do with the reality. The reality is that McCulloch insisted on having a grand jury handle this, and instead of being the prosecuting attorney he was the defense lawyer. He did a good job as Wilson’s defense lawyer, and a lousy one at serving the people as county prosecuting attorney. He should either have dismissed the case, or he should have sent it to a preliminary hearing for trial. When you do a search......."McCullogh should have sent the Wilson case to a preliminary hearing"....... you do not have to read all 737,000 results.....the one written by Jerryl T. Christmas for the St. Louis American, picked up by the Pittsburgh Courier, which includes "charade" in the title is probably as good as any with which you could educate yourself. The charade multiplied the violence and property damage and publicity resulting from the demonstrations by ten, or a hundred or more. Mcculloch should have been disbarred or jailed for the way he handled it.

Given the forensics and witness testimony we have seen.......the results would have been much more clearly defined for officer Wilson. It would not have been as theatrical on behalf of Stenger during an election year, but it would have been far more straightforward.

You may continue your tangent, but I won’t be arguing. My only
You may continue your tangent, but I won’t be arguing. My only point was the questions she had could be found in the DoJ report. I don’t really care about your ranting opinions. It might help to take off the tin foil hat?

Kjoe777  TheWinterIsHere  3 months ago

It was not her questions at issue...it was his motivation for having her testify. You do not appreciate responses of substance. It is all right, but you need a little practice on tin hat control, or you will soon have the bases loaded.

STLartist  Guest  3 months ago

"If Wilson hadn’t backed up his car in that intimidating manner, Brown might still be alive." If Brown hadn’t gone for the officer’s gun he’d still be alive.
This is proof what lengths people will go to lie and deceive, merely to increase their own relevance. There are the more obvious reasons to lie such as profit, revenge, anger or personal gain. This the Ferguson incident shows ALOT of people will lie just to lie. They will lie to increase their own significance. Even celebrities were jumping on the bandwagon, wearing and promoting the "don't shoot shirts".

- This is another reason I dislike liars. They ruin lives and unfairly ruin reputations. It's one thing if you ruin your own reputation by your own misdeeds and conduct. It's about 1000 times worse when it's done because of lying or communal lying.

- And although the Ferguson incident was a total sham, and the people involved in the deception should be ashamed of themselves, I still think the Trayvon case was a travesty of justice.

JudgeSturdy · 3 months ago

The bottom line is that if Michael Brown and Dorian Johnson had been two white kids walking down the middle of the street in Ferguson, *none* of this would have happened.

locomotivebreath1901 · 3 months ago

Not a 'myth', A. LIE! A flat out, bold faced LIE designed to enrage, incite hate, and violence. Mike Brown got himself killed. PERIOD.

And the country is SICK of these race pimps with their perpetual grievance agitation mobocracy which does nothing but crap where the eat, then demand everyone else clean up their foul mess.

Enough already!

Kjoe777 · 3 months ago

There has been plenty of incontrovertible noise offered from and on behalf of Obama's justice department......and it seems to me like......if you want to take issue with how and why McCulloch handled this case......if you start by attacking Wilson, you are automatically blocked............because the evidence and witnesses and forensics are incontrovertible.......therefore McCulloch did everything just right. His use of witness 40, and his balancing it with witnesses lying on behalf of Michael Brown....... everything was just fine, because he wanted all witnesses to be able to testify........if this was such a slam-dunk, and for God's sake I am not saying it wasn't.................why the McCulloch dog and pony show of lying witnesses, the grand juror doe who cannot talk, the secrecy of how the grand jury voted.......who is willing to say it was less than 11-1? Of course, all it took was 4-8. My
personal problem with this....anything from either of the Freivogels is automatically suspect.
Analysis: From Ferguson to Baltimore, McCulloch to Mosby, how do prosecutors work?

By WILLIAM H. FREIVOGEL  •  MAY 6, 2015

First of two reports — A change may be underway in the prosecution of police brutality cases, with prosecutors moving more quickly to charge officers when they have strong evidence, experts say.

After two long-running grand juries in Ferguson and Staten Island, N.Y., decided not to indict officers in high-visibility cases, authorities in North Charleston, S.C.; Tulsa, Okla., and Baltimore moved rapidly to charge officers in the deaths of Walter Scott, Eric Harris and Freddie Gray, respectively.

The evidence may have been stronger in the three April deaths than it was against then-Ferguson police officer Darren Wilson in the shooting death of Michael Brown last August. But national attention may have prompted prosecutors in the recent cases to move more aggressively.

David Harris, a University of Pittsburgh law professor and expert on police cases, said he thinks a change may be afoot.

“One change that I think we are witnessing in some of these cases since Ferguson — not everywhere, not every case, but sometimes — is that when jurisdictions have enough evidence to charge, they go ahead and do so, sometimes rapidly,” he wrote in an email.

“I think if you went back a year ago from now, what you’d see in most police-involved shootings is an investigation, sometimes done in a very deliberate, slower than necessary fashion; then consideration of the case by the prosecutor, also quite slow. Both police and prosecutors would often sit on their findings for considerable periods, in what could be seen as (and what in fact was) a deliberate stalling tactic to wait enough time so that few members of the public were paying attention any longer.

“Now, with these high-profile cases since Ferguson, it’s become obvious that the attention will not wane — that people have decided to keep paying attention until there is resolution, one way or the other. So in the last several cases — North Charleston, Tulsa, Baltimore — when the
evidence was there, prosecutions went ahead promptly.

“This may prove to be more true over time of cases in which there is video evidence; we’ll have to see. And I’m aware that three big cases do not a permanent change make. But it’s a significant enough shift from what would have been the usual a year ago that I have noticed it.”

**McCulloch vs. Mosby**

State prosecutors have the power to file criminal charges on their own information based on police investigations. But they have seldom taken that route in police brutality cases.

Instead, prosecutors have often used grand juries in police cases, partly because the grand jury is a good setting in which to test the veracity of witnesses.

So when St. Louis County Prosecuting Attorney Robert McCulloch took the Ferguson case to the grand jury and Staten Island prosecutors did the same in the choke-hold death of Eric Garner, they were following the usual pattern.

The three prosecutions announced during the past month run counter to that pattern.

Tulsa District Attorney Stephen Kunzweiler filed second-degree manslaughter charges against reserve deputy Robert Charles “Bob” Bates, who said he accidentally shot Eric C. Harris with a gun instead of a TASER after Harris fled a sting operation.

The South Carolina Law Enforcement Agency charged Officer Michael Slager with murder for shooting Walter Scott in the back as he fled a traffic stop.

And then Marilyn J. Mosby, Maryland state’s attorney for Baltimore, startled just about everyone last week by quickly announcing criminal charges against six Baltimore officers involved in the arrest and custody of Gray, who died after suffering a spinal injury.

**Mosby vs. McCulloch**

The comparisons and contrasts between McCulloch and Mosby are striking:

- McCulloch is a veteran white prosecutor. Mosby, a 35-year-old African American, is the youngest prosecutor in a major American city.
- Both are from police families.
- Both are accused of conflicts of interest, although from opposite directions. The police union
in Baltimore is calling for Mosby to be removed, while civil rights activists demand McCulloch’s ouster.

- Both respond to the conflict charges the same way — they’re going to do the job they were elected to perform and are accountable to the voters.
- Both have public personas that can grate on critics. McCulloch sometimes exhibits an in-your-face feistiness. Mosby critics say her announcement of charges had the appearance of playing to the crowd.
- McCulloch took three months to present all of the evidence to the grand jury, while Mosby announced her charges the day that she received the report from the medical examiner classifying Gray’s death as a homicide.

Neither acting swiftly like Mosby nor deliberately like McCulloch insulates a prosecutor from criticism.

Ferguson protesters demanded for months that Wilson be arrested. Meanwhile Mosby’s legal critics accused her of rushing to judgment to please the crowd by filing a criminal case that will be hard to prove.

Stephen H. Levin, a former prosecutor and police defense lawyer in Baltimore told NPR this week, he expected the defense lawyers for the police would try to force Mosby from the case claiming she “acted very quickly without conducting a full and fair investigation. I think most people seem to be shocked by the decision to charge so quickly within 24 hours after obtaining a report by the police department.”

**Grand jury reform?**

At the height of the criticism of the Ferguson and Staten Island grand juries last December, most of the calls for systematic change focused on grand jury reform and appointment of special prosecutors.

Judges, lawyers, civil rights groups and politicians across the nation called for reform, even abolition of the “antiquated” grand jury system.

- New York Gov. Andrew Cuomo proposed creating an independent monitor to look through closed grand jury records of fatal police shooting cases, with the possibility of reviving old ones.
- New York Attorney General Eric Schneiderman proposed sending all police misconduct cases to the state prosecutor’s office to avoid the close relations between prosecutors and police.
- And New York’s highest judge, Jonathan Lippman, called grand juries “a relic of another time,” proposing a bill to put judges in grand jury proceedings to ask questions and provide legal guidance.
- A bill in California would end the use of grand juries in police shooting cases. Meanwhile, U.S. Rep. Hank Johnson, D-Ga., has introduced federal legislation to force states to appoint a
special prosecutor to conduct public probable cause hearings when police are accused of crimes. States that did not comply would lose federal funds.

- In Missouri, Rep. Brandon Ellington, D-Kansas City, has proposed a ballot referendum giving voters the chance to abolish the grand jury system. That proposal and others to require special prosecutors are not expected to pass.

McCulloch himself lambasted the proposal to abolish the grand jury.

“The scary thing is that there is one proposal in Jefferson City to abolish the grand jury,” he said in a speech at the University of Missouri law school. “As the sponsor said, 'Why are we dealing with this antiquated system anymore'; well ... Legislatures have been around even longer than grand juries. That didn't bother him. It would be a bad idea to get rid of them.”

**Tables turned**

In the five months since last December's crescendo of reform proposals, most have stalled.

Mosby's quick action in Baltimore actually has the effect of countering one of the most popular proposals: special prosecutors. If an elected prosecutor can move quickly, why appoint a special prosecutor?

When McCulloch announced the Ferguson grand jury's decision to not indict last November, Mosby said she had to question his "motives" and seemed to suggest that special prosecutors were one solution to the situation.

"In Ferguson, over 68 percent of the population is black and less than 6 percent votes," she said on Baltimore TV. "So you have an individual who is in office and does not share your interests and values and is making decisions about your daily life. ... It tears my heart apart as a mother. ... We say bring in special prosecutions, we say let's have body cameras, we talk about training but it starts with accountability."

On Friday, just before Mosby announced the charges in the Gray death, the Fraternal Order of Police called for her to step aside in favor of a special prosecutor. The union accused Mosby of two conflicts: the Gray family lawyer gave her a $5,000 political contribution and her husband is a city councilman representing Gray's district. (The Fraternal Order of Police also contributed to Mosby's campaign.)

Asked about the conflict at a press conference after announcing the charges, she said special prosecutors aren't accountable.

"I can tell you that the people of Baltimore City elected me, and there's no accountability with a special prosecutor. I can tell you that from day one, we independently investigated. We're not just relying solely upon what we were given from the police department, period. ... I don't see an appearance of conflict of interest. My husband is a public servant. He works on the legislative
side. I am a prosecutor. I am also a public servant. I uphold the law. He makes the laws. And I will prosecute any case within my jurisdiction.”

Harris, University of Pittsburgh law expert, said, “The call for a special prosecutor and the call for Mosby to recuse herself are oddly different than what we would usually hear from the FOP in such a case. When they are comfortable with a prosecutor and feel they will get the kind of answer they want on whether to charge an officer, they aren’t looking for either of these things.

“The bottom line is they would simply prefer another decision maker, and neither of these arguments will work. If anything, it seems like the claims that Mosby is biased are not as strong as the same kinds of claims against McCulloch.”

With McCulloch, Harris said, there was the claim he was political, like any elected prosecutor, and that his father, a police officer had been killed in the line of duty. With Mosby it’s that she and her husband are politicians with nothing more.

“But Mosby herself comes from a long line of law enforcement officers. I don't see the bias claim against her amounting to much, and it won't result in recusal.”

Tomorrow: How unusual was the Darren Wilson grand jury?
Analysis: How did Bob McCulloch do in Ferguson case?

By WILLIAM FREIVOGEL • MAY 7, 2015

Second of two articles - Last fall, after St. Louis County Prosecuting Attorney Robert McCulloch announced the grand jury’s decision not to indict Officer Darren Wilson, the Ferguson grand jury was exhibit A among those pushing for grand jury reform and for special prosecutors in police shooting cases.

The NAACP Legal Defense Fund and other groups called for investigations into McCulloch’s handling of the grand jury. Critics pilloried McCulloch and filed an ethics complaint. Governors, attorneys general, judges and politicians around the country came up with ideas for reforming the legal process.

Now, five months later, the Department of Justice has cleared Officer Darren Wilson, most of the reform proposals are stalled, the calls for grand jury reforms have subsided and McCulloch has delivered two lengthy defenses. McCulloch even surprised his critics by calling for the elimination of some small police departments “because they are lousy.”

Two final challenges to McCulloch’s grand jury remain alive. One is the ACLU’s lawsuit on behalf of an unnamed grand juror who wants to dispute McCulloch’s characterization of the grand jury. That suit was bumped to state court this week.

The other is a challenge by four local activists pending in St. Louis County Circuit Court. They are seeking a special prosecutor to investigate McCulloch’s handling of the grand jury. Legal experts say the odds of that suit succeeding are long.

McCulloch’s defense

With the records of the criminal investigations of Wilson almost complete, experts are assessing how well state and federal prosecutors performed.
McCulloch defended himself at Saint Louis University law school in February and the University of Missouri law school in April.

The Mizzou speech followed the Justice Department’s finding that none of the credible witnesses to the Brown shooting and none of the physical or forensic evidence supported the “Hands Up, Don’t Shoot” version of the shooting.

Several times McCulloch referred to the Justice Department’s investigation as validating the Ferguson grand jury.

But McCulloch’s critics disagree.

David Harris, a law professor at the University of Pittsburgh law school, said, “McCulloch thinks that because the result is the same – no prosecution – the federal investigation backs him up. But this is wrong.

“The McCulloch grand jury was a lesson in an important principle: process matters. McCulloch used a highly unorthodox process with his grand jury. … The grand jury heard defense evidence, and in fact heard it first; they usually hear no defense evidence. The grand jury usually gets only what the prosecutor thinks it needs to come to the conclusion the prosecutor thinks is correct; here, the grand jury was inundated with all the evidence.

“The prosecutor usually makes a strong recommendation of what the grand jury should do; here, no recommendation was given. All of this ‘special treatment’ subverted the grand jury’s usual role and effectively made for a much more extensive case against indicting than is ever heard in a grand jury room.”

By contrast, said Harris, the federal prosecutors “did the same kind of thorough, complete, top to bottom investigation that they always do; there was no ‘special handling’ involved.”

The DOJ report, which methodically compared the witness statements to the physical and forensic evidence - was more digestible and understandable than the thousands of pages of state grand jury transcripts released by McCulloch, experts said.

**Ferguson grand jury unique**

The uniqueness of the Ferguson grand jury is central to the argument made by the four activists seeking a special prosecutor to investigate McCulloch. Maggie Ellinger-Locke, their lawyer, argued in a court filing that McCulloch “has provided no reason for treating this case differently than other killings. On this basis alone, Mr. McCulloch acted arbitrarily.”

McCulloch explained at Mizzou that the Ferguson grand jury was different because of the extraordinary national attention.
Normally McCulloch first figures out if an indictment is warranted before going to a grand jury. That process weeds out about 40 percent of the cases, he said.

But, in Ferguson, “we didn't have the luxury of looking at all of the evidence before it was being presented,” he said. “That was a decision I made because I thought it was much more important to get things started so the public knew we were at least working on this.”

The Ferguson grand jury became an investigative grand jury, which is an unusual function for a grand jury, he acknowledged. Usually grand juries are acting on cases already fully investigated.

Some veteran prosecutors defend McCulloch’s handling of the grand jury.

David Rosen, a Washington University law professor who was a federal prosecutor of police cases in St. Louis, said, “When you are using a grand jury just to indict, it is a very straightforward process; when you are using it to investigate it is a much more wide-open process.”

Robert T. Haar, a prominent lawyer and former federal prosecutor in St. Louis, agreed. “He was in a no-win situation,” he said. “I have never understood this idea that this was a normal grand jury. If you make the commitment to present all of the evidence you present all the evidence. It was never going to be a normal grand jury. It wasn't a normal case.”

Last month, the American Bar Association held a seminar on “Grand Jury Reform, Post-Ferguson.” Andrew D. Leipold, a law professor at the University of Illinois, said he had little sympathy for McCulloch but “he was going to be criticized no matter. … If he presented everything it’s a data dump and if hold back then whitewash.”

The real problem, Leipold said, is that truth-finding “is not what the grand jury is good at.” That requires an adversarial process, such as a preliminary hearing.

Harris, the University of Pittsburgh critic, said, “The grand jury is an anachronism in some important ways. It is secret; it is completely one sided; it is controlled not by the court, but by the prosecution.” But he said a grand jury could still work if a state-wide special prosecutor – “not beholden to any police department” - were appointed for police shootings.

Roger Goldman, an emeritus law professor at Saint Louis University, wonders if special prosecutors are a good idea. “I recall the actions of Kenneth Starr when he was appointed Independent Counsel to investigate President Clinton and worry that there is no effective check,” he said.

Here are some the criticisms of the Ferguson grand jury and McCulloch's responses:

McCulloch should have forced a manslaughter plea

S. David Mitchell, a law professor at Mizzou, asked McCulloch why he didn’t at least get a
manslaughter plea from Wilson based on the low standard of probable cause.

McCulloch responded: “You can't just charge somebody to be charging them, and say, 'Wait a minute, here's what I'm going to do - I could charge you with murder in the first degree, and you are facing the death penalty... but I'm going to charge you with manslaughter and you plead to that and take a five-year sentence and I'm going to take the death penalty off the table.' That is just absolutely wrong. I should be indicted if I did that and go to prison for that.”

When Mitchell persisted, McCulloch showed his combative side: “You ever been in the courtroom, professor?” he asked.

If the prosecutor can only meet the threshold probable cause standard “you have no business prosecuting that case,” McCulloch said. “I know what it takes to prove a case in court; and if I can't prove it, I can't charge it. If we don't have a reasonable shot at proving beyond a reasonable doubt we shouldn't be charging.”

**McCulloch's prosecutors should have been tougher cross-examining Wilson**

SLU professor Jesse Goldner criticized McCulloch's prosecutors for failing to aggressively cross-examine Wilson.

But McCulloch said prosecutors don't challenge a grand jury target in the rare instances when targets testify.

“I would love to have the target of every investigation giving testimony in front of a grand jury,” McCulloch said at Mizzou. “I would love that because what you get then (he) is locked into a statement. Most lawyers will say (to a target) 'You ain't going anywhere near that place.' That's the advice I would give.”

Haar and Rosen, the veteran prosecutors, agreed it’s a prosecutor’s dream for the target to testify.

Rosen said he would only cross-examine aggressively if portions of the target’s testimony were at odds with physical evidence or forensics. Wilson's testimony was not.

But Goldner said McCulloch's explanation “made little sense.” It doesn’t “explain why a prosecutor would forbear the opportunity from actively cross-examining him when he finished his ‘prepared’ statement. ... The failure to cross-examine the officer when there was an opportunity ... undercuts any claim to real truth-seeking.”

Harris agreed: “There was no danger that the 'target' was going to stop talking in this case. The officer and his counsel knew that this was their opportunity to swing the case their way.”

Civil rights lawyer Stephen Ryals also thinks McCulloch's prosecutors should have challenged
Wilson. “There is a difference between letting the ‘target’ talk and leading him through the rationalization for his use of force,” he said.

**McCulloch should have disqualified himself**

Ellinger-Locke, the activists’ attorney, claimed McCulloch should have disqualified himself because he “has shown a bias in favor of police officers throughout his career. Mr. McCulloch has significant ties to the St. Louis police community; his father was a police officer killed in the line of duty.”

McCulloch rejected that charge at Mizzou. “I got elected to handle these cases,” he said. “Recusing myself never entered my mind. …

“There was that quantum leap that was being made from your father was a police officer killed 50 years ago and you cannot be fair. There is a whole lot in between and yet nobody could cite anything in between that one was connected to the other.”

McCulloch said he could only be removed if there was “a finding that there is a real conflict, not just that someone is yelling at you. Geez, if I walked away from a case every time somebody yelled at me I wouldn't have a lot to do.”

McCulloch noted that only a month before the Brown shooting, he had investigated a shooting in Pine Lawn where a white police officer shot a black suspect. No one accused McCulloch of a conflict of interest in that case, even though the officer was not prosecuted.

McCulloch didn’t name the person who asked him to investigate but made it clear it was Anthony D. Gray, who later became the Brown family lawyer. Gray was public safety director at the time of the Pine Lawn shooting.

If Gray was asking him to review a police shooting case in July, how could he accuse him of having a conflict a month later, McCulloch asked.

**McCulloch’s prosecutors gave conflicting instructions of law about the use of deadly force by police officers.**

Ellinger-Locke argues McCulloch confused the grand jury because his prosecutors “initially instructed the grand jury to apply Missouri’s now-defunct statute on justification of police use of deadly force.”

Shortly before Wilson testified, prosecutors told grand jurors they should follow the state law allowing police to shoot a fleeing felon to effect the arrest.

Three months later, during the last week before grand jury deliberations, McCulloch realized this law was outdated because the Supreme Court had ruled it unconstitutional for police to use deadly force if the fleeing felon is unarmed and non-dangerous.
So the prosecutors revised the legal instructions. McCulloch pointed out that the final instruction was the approved jury instruction required by the Missouri Supreme Court. The final instruction made it easier to indict Wilson, not harder.

**McCulloch's prosecutors presented testimony they knew was false.**

Attempts to remove McCulloch have cited claims he allowed witness 140 to testify in support of Wilson’s version of events even though she clearly fabricated her account.

But McCulloch's supporters point out that eight of the witnesses who had supported the "Hands Up" version of the shooting admitted they had lied. Yet a number of them testified.

Dorian Johnson, Brown's companion and the leading accuser of Wilson, was allowed to testify too, even though much of his account was contradicted by forensic evidence, physical evidence and the accounts of credible witnesses.

Leipold pointed out during the ABA seminar on Ferguson that it often isn’t clear who should be kept from testifying because of untruthfulness. “These cases are never clean,” he said. “You never have the station wagon full of nuns” as witnesses.

**McCulloch shouldn't have introduced exculpatory evidence favoring Wilson**

For decades, the leading proposals for grand jury reform have been to decrease secrecy and to include more exculpatory evidence that might clear a target.

McCulloch took both steps, releasing grand jury transcripts and injecting evidence that could clear Wilson. That makes it difficult to point to the Ferguson grand jury basis for reform.

Roger Anthony Fairfax, a George Washington University law professor, told the ABA seminar on Ferguson that McCulloch’s work should be judged by whether he made the right prosecutorial decision.

“We should praise or criticize him not on whether he gave the grand jury too much or put on a liar. … Let’s praise or not based on whether he made the right decision not to prosecute.”

Based on the information compiled by the entire investigation – state and federal – most experts say that the decision not to charge Wilson was supported by the weight of the evidence.
I have been a plaintiffs civil rights attorney for 41 years. McCullough did a good job and produced a lot of evidence to the Grand Jury. It would be easy to do it the Baltimore way and simply charge Wilson with a crime and let a petit jury decide. But Wilson was correct in his self defense and use of force. If you want all of your police to quit and go into other jobs then keep up the Al Sharptongue mantra. Ferguson needs to have its municipal court closed as do all the county municipalities. Set up a system like the City of St. Louis and have county wide judges handle all cases below the felony and misdemeanor level. That deals with a problem separate from the act of Wilson in shooting the felon.