

2nd Opinion: Grand-jury reform, Black Lives Matter and pro-life advocacy

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Our criminal justice system is broken in regard to grand juries.



Kathryn Freeman Many people are familiar with the roles of law enforcement, judges and lawyers in the criminal justice system. Most people are decidedly less familiar with the important, but often hidden, role of the grand jury.

A grand jury is composed of 12 citizens of the county where the grand jury sits, able to read and write, not under indictment, etc. The most common role of the grand jury is to listen to the facts of a case and determine if probable cause exists for charges alleged against a defendant.

While both grand juries and trial juries are made up of people who must travel to the courthouse to consider the evidence, a grand jury only hears one side of the story—the prosecutor's.

“A good prosecutor can get a grand jury to indict a ham sandwich.”

A grand jury only hears the evidence presented by the prosecutor. Indeed, the entire process is dominated by the prosecutor. The prosecutor

determines who testifies and how the evidence is presented.

The rules that apply at trial do not apply to grand juries. For example, prosecutors can present evidence to a grand jury they could not present in a trial—hearsay testimony or unreliable evidence. Additionally, the target of an investigation is not entitled to testify before the grand jury, the defendant’s attorney is not allowed to be present in the grand jury room, and the prosecutor is not required to present evidence that may exonerate the target of the investigation.

The historical purpose of the grand jury was to act as a shield between the government and the defendant. Between the desire to be seen as “tough on crime” and the political pressures of the elected office, the system has broken down.

We recently learned a Harris County grand jury indicted two employees of the Center for Medical Progress on two felony counts related to their efforts to determine if Planned Parenthood was selling infant body parts. To be clear, grand juries, if they indict, are following the lead of the district attorney.

According to Planned Parenthood’s attorney, Planned Parenthood employees only gave interviews to prosecutors and did not give testimony to the Harris County grand jury. Additionally, the Planned Parenthood attorney stated the grand jury never considered an indictment against Planned Parenthood or its employees.

We do not know what evidence the grand jury considered before handing its indict against David Daleiden and Sandra Merritt of the Center for Medical Progress, because the second characteristic of grand juries is secrecy.

Harris County prosecutors are not required to provide details of the case, including the evidence or documents presented to the grand jury. The

Texas Code of Criminal Procedure explicitly states unauthorized disclosure of grand jury proceedings can be punished by a fine for contempt of court, imprisonment or both fine and imprisonment.

There are good prosecutors and bad prosecutors. The problem with grand juries is a perfectly ethical prosecutor operating within the law can get an indictment based on unreliable third-hand evidence, and because of the secrecy surrounding the proceedings, there is no way of safeguarding the system on the front end.

Where Black Lives Matter and the pro-life movement should come together

Many pro-life advocates are calling out the “runaway grand jury” in this case, but they have been silent about grand jury abuses when juries have declined to indict law-enforcement officials for killing unarmed black people. Racial justice and criminal justice reform advocates have for years called for reforms of the grand jury process because it is easily manipulated to ensure a desired outcome.

In the Tamir Rice case, the prosecutor leaked grand jury testimony for months to signal the police officers who killed an unarmed 12-year-old boy would not be charged. In many ways, the system revictimized the Rice family, since they felt they had no one advocating for their lost loved one. The prosecutor in the Rice case never recommended the grand jury bring criminal charges against the officers, just as it seems the Harris County prosecutor never considered charges against Planned Parenthood.

While Planned Parenthood and Black Lives Matter have presented different problems with the grand jury system, the brokenness of the system ultimately causes the same damaging result.

Pastor Thabiti Anyabwile of Anacostia River Church perfectly lays out the problem with broken systems. Pro-life and racial justice advocates tend to

be on opposite sides of the political spectrum, but the grand jury process should bring these two groups together to call for the following reforms:

- An independent prosecutor in cases where the defendant is tightly involved with the prosecutor's office or there is a perceived conflict of interest.
- An obligation to present evidence that may exonerate the target or subject of the offense.
- The right of the accused to testify in grand jury proceedings.

Adherence to God's demand for justice is a mark of discipleship (Micah 6:8; Isaiah 58:6-7). This includes rejecting both individual acts of injustice, such as favoritism or racist language, and systemic acts of injustice, such as bias in criminal justice, educational inequality or the financial exploitation of the poor.

The enemy's approach is not isolated to individuals. In *Armor of God*, Priscilla Shirer points out the enemy carefully crafts and proliferates philosophies, doctrines and worldviews across whole nations to derail nations and people from God (2 Corinthians 4:4).

In *Generous Justice*, Tim Keller insists doing justice is more than righting wrongs, but also expressing generosity and social concern, especially toward the poor and vulnerable. This includes activism that ends particular forms of injustice, violence and oppression.

Christians who care about criminal justice reform, racial justice and pro-life values can "do justice" in this arena together. As the great Baptist preacher Martin Luther King Jr. stated, "Injustice anywhere is a threat to justice everywhere."

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