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Police Leeway Cited in Grand Jury Finding

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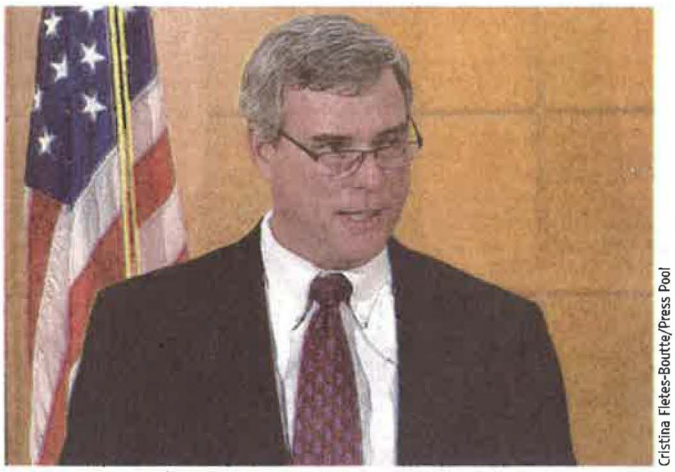
ANALYSIS

A grand jury spent three months determining what happened Aug. 9, when Officer Darren Wilson shot 18-year-old Michael Brown in Ferguson, Mo. Their deliberations—which led to no charges—were shaped by several factors, including a law that gives officers broad leeway to use deadly force when they think their lives are in jeopardy, and physical evidence that supported the officer's narrative.

Prosecutors may have made an indictment even less likely, some legal experts said, by throwing volumes of evidence at the grand jury rather than tailoring it to present a more compelling argument. Prosecutors denied the accusation and said they wanted to present all available evidence to be fair.

The general law of self-defense in Missouri and the rest of the U.S. allows the use of deadly force when someone fears that life, or that of another person, is in danger. When such cases involve police, prosecutors and jurors often are asked whether an officer acted "reasonably," while keeping in mind such decisions are often made quickly and under strain.

The legal standard for police "allows for the possibility of a nonnegligent mistake," said Robert Weisberg, co-director of the criminal justice center at Stanford Law School. "It signals that police officers are supposed to get a special amount of deference."



Cristina Fletes-Boutte/Press Pool

St. Louis County prosecutor Robert McCulloch on Monday

The thousands of pages of witness testimony presented to the grand jury, unveiled Monday, show different perceptions of the shooting, many of them contradictory.

"Once he was hitting me in the face, that [was enough] in my mind to authorize the use of force," Officer Wilson told the grand jury in September, describing a struggle with Mr. Brown in his police car preceding the fatal shots. Mr. Wilson said that after he briefly pursued Mr. Brown on foot, the teen started charging at him.

Others, however, testified that Mr. Brown was falling or retreating when Mr. Wilson fired the deadly shots. "If he was hit in the head, it was as he was falling," said one witness. Officer Wilson "did not have to fire that last volley.... He had made up his mind he was going to kill him."

In light of such contradictions, the grand jury may have placed its faith in physical evidence, said Joseph Hogan, a former St. Louis County prosecutor and criminal defense lawyer who has represented police in use-of-force cases. An autopsy showed no wounds on Mr. Brown's back, contradicting the witnesses who said the teen was running away when he was shot.

Bruce Barket, a New York defense lawyer and former prosecutor, said a blood trail found outside the car corroborated in his mind Mr. Wilson's account that Mr. Brown charged him. And blood on Mr. Wilson's pant leg and inside his car supported his account of a struggle.

On Tuesday, Benjamin Crump, the lead attorney for Mr. Brown's family, said he and his team reviewed the evidence presented to the grand jury and "saw how completely unfair this process was."

The grand jury was given some 70 hours of testimony from about 60 witnesses. It was a strategy that St. Louis County Prosecuting Attorney Robert McCulloch defended Monday. "Decisions on a matter as serious as charging an individual with a crime simply cannot be decided on anything less than a complete critical examination of all available evidence," he said.

But Bennett Gershman, a law professor at Pace University in New York and a former prosecutor, called the prosecutorial strategy "highly unusual," and questioned whether a prosecutor attempting to seek an indictment would present jurors with so much conflicting testimony. It "reinforces the idea that the grand jury was set up to exonerate the officer," he said.

Yet prosecutors don't have to advocate zealously for the state before a grand jury, said Stephen Gillers, a legal-ethics scholar at New York University. "Sometimes, in a high-profile case, where the issues are subtle, a prosecutor may decide just to leave it all to the conscience of the grand jury," he said. Mr. Gillers said he saw "nothing to indicate" that Mr. McCulloch had acted improperly or unethically.

—Jacob Gershman contributed to this article.