

## EDITORIAL: Let's find a fairer way to investigate officer-involved killings



Protesters stage a four and-a-half minute "die-in" in downtown Washington on Friday, Dec. 5, 2014, during a demonstration against the deaths of two unarmed black men at the hands of white police officers in New York City and Ferguson, Mo.

CLIFF OWEN — AP Photo

U.S. Attorney General Eric Holder on Wednesday promised a federal civil rights investigation into the death of Eric Garner at the hands of a New York City police officer.

It was a calculated move after a grand jury's decision not to indict the officer set off widespread protest and outrage from a nation reeling from the Michael Brown case in Ferguson.

"Our prosecutors will conduct an independent, thorough, fair and expeditious investigation," Holder said in a statement. What Holder didn't say, but implied, is that the local grand jury process in the Garner case was not "thorough," "fair" or "expeditious."

Garner died in July while being arrested for selling untaxed cigarettes. A bystander's videotape shows white officers piled atop Garner. One has Garner, who is black, in a chokehold. Garner is heard croaking "I can't breathe" several times before going into cardiac arrest. His final words have become the rallying cry of another wave of protests, beginning just days after the Thanksgiving unrest in Ferguson died down.

Holder's action amplifies a growing call by civil rights advocates, community groups, legal scholars and even some law enforcement advocates to change the way we investigate officer-involved killings.

When a cop kills someone in the line of duty, local district attorneys must decide whether to file charges. Police agencies themselves conduct internal reviews, though they are secret and the punishments may entail only work-

related sanctions. In some cases, prosecutors use grand juries to review evidence, though in these closed proceedings prosecutors run the show.

The problem is that, by their very nature, prosecutors are not independent when it comes to law enforcement. Police officers and prosecutors work together to charge and convict perpetrators of crimes. They are allies and rely on each other to get their jobs done.

There are ways to evaluate death-in-custody cases that don't rely on local prosecutors, primarily using outside prosecutors to remove the appearance of bias. They would be trained lawyers, or panels of them, who do not regularly work with the local law enforcement agency and have no incentive to maintain working relations with the police agency under review. Perhaps state attorneys general could take on the task.

Another idea that has been suggested is reviving the inquest, a form of quasi-official investigation not widely used in this country since the 19th century. Both ideas are worth considering.

How many cases this would entail each year is, at this moment, unknown. There's no comprehensive collection of data on civilians killed while in custody or in the process of arrest. The best numbers, which aren't very reliable or current and most certainly under-reported, put it at several hundred cases a year and more than 100 in California.

The cost must be considered of gathering data and finding smarter ways to investigate officer-involved deaths of criminal suspects. But the deteriorating trust between law enforcement and significant segments of the public in some communities brings with it an unacceptably high price.

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