



By [Ilann M. Maazel](#), *Law.com Contributor* Published: Dec 4, 2014

Policing the Police

Something is terribly wrong with our criminal justice system.

An NYPD police officer kills an unarmed man in cold blood, using an illegal chokehold. The man cries out at least eight times: “I can’t breathe.” The killing is captured on video. At least five officers either assist in the restraint or do nothing to stop it. The medical examiner rules the death a homicide caused by the chokehold. The local prosecutor fails to secure an indictment for any crime at all. Not even for “[criminal obstruction of breathing](#).”

How is this possible? How many more Eric Garners, Michael Browns, [Leonel Dislas](#), and [Tamir Rices](#) do we need before we finally reform the justice system from top to bottom?

Some ideas for reform:

- Local prosecutors rely on the police to prosecute their cases. Unsurprisingly, these same prosecutors fail miserably when investigating and prosecuting the police. It is an inherent and well-known conflict. The reform is straightforward: only independent special prosecutors with no institutional relationship with the local police department should investigate and prosecute police misconduct.
- Police departments, including the NYPD, often do a poor job of disciplining officers who violate the law. In the [Kenneth Banks](#) case, a police officer threw a walkie talkie radio at the head of an unarmed civilian riding a bicycle, killing him. The NYPD failed to charge the officer with excessive force. Instead, the department charged the officer with depriving himself of a means of communication, by losing the walkie talkie. A federal grand jury later indicted the officer, who was convicted in connection with the killing. How could the NYPD fail to seek any discipline at all for a killing where the officer was later convicted of a federal crime?
- Absent effective self-oversight by police departments, the alternative is civilian oversight. But in the vast majority of American cities, there is poor or no civilian oversight over local police departments. A civilian oversight board must have teeth, meaning, at a minimum, the ability to discipline police when they violate the law.
- Police misconduct lawsuits rarely affect police officers. The municipality almost always pays the full settlement or judgment, and even a judgment by a jury or judge that an officer broke the law rarely leads to disciplinary consequences. In many cases, the judgment is not even made part of the officer’s personnel file. Does any of this make sense? A judgment by a jury that an officer violated the United States Constitution should matter. It should lead to disciplinary consequences.

- [Body cameras](#) on police officers have reduced police officers' use of force and civilian complaints. Cameras should be a win-win for officers and civilians: civilians will have evidence when police violate the law; officers will have evidence when falsely accused of violating the law. Though video is obviously not a panacea for police misconduct (as the Garner case makes clear), video will constrain much, and maybe even most, police misconduct.
- A disproportionate percentage of egregious police misconduct cases involves white officers injuring or killing non-white civilians. Better training, better education, and more diversity on the force are all critical. And of course, our country still has much work to do when it comes to the question of race.

The failure to indict in the Garner case has understandably led to protests throughout the city and the country. Peaceful protests are important, but as a civil rights lawyer who has litigated police misconduct cases for over 15 years, I have to believe we can also reform the legal system from within.

If we implement the reforms above, we might finally begin to solve this problem. If we fail, the next Eric Garner is just around the corner.

Read more: <http://www.law.com/sites/ilannmmaazel/>

This article was first published on the Law.com Network on Dec. 4, 2014.