



## 'Presumed guilty' series points to need for sweeping reforms in Cuyahoga County justice: editorial

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PD Photo/Lonnie  
Timmons III  
Charice Gilmore

The Plain Dealer's four-part series, "**Presumed guilty**," described a series of outrageous abuses in what might politely be described as a Cuyahoga County injustice system.

Although it focused on Rule 29 of the Ohio Rules of Criminal Procedure -- which enables judges to dismiss criminal cases if they determine insufficient evidence was presented at trial -- the series highlighted systemic failures at the prosecutor's office, in grand jury procedures and in how judges applied the rule.

The result in a significant number of cases: Folks against whom there was scant to no evidence of a crime were exposed to an unnecessary judicial nightmare.

Plain Dealer reporters Amanda Garrett and John Caniglia spent nine months reviewing thousands of court documents, interviewing more than 200 defense attorneys, judges, current and former prosecutors, and suspects, and creating databases to track trends in Rule 29 rulings both locally as well as in Allegheny County, Pennsylvania.

Their findings were best illustrated by the case of **Charice Gilmore**, a Cleveland mother who was indicted for inciting a neighborhood fight, even though she was in another county at the time. The Cleveland detective who testified before the grand jury recounted events that were not backed up with evidence, or were false.

Although the assistant county prosecutor handling the case soon learned of its flaws, she didn't think it was her place to ask a superior to drop the charges, she later told reporters. A judge threw the case out.

Cuyahoga County Prosecutor Bill Mason's first assistant, Michael O'Malley, insisted the decision to take Gilmore to court was justified -- because, O'Malley said, what the detective told the grand jury was essentially correct: Gilmore allegedly instigated the brawl by making threats that triggered the event, even though she wasn't there.

Mason doesn't apologize for his aggressive pursuit of justice -- even when it may sometimes target people who are innocent. "I see myself as someone holding people accountable for their actions," he told Garrett and Caniglia.

Mason argued that the merits of his prosecutions were supported by an overall conviction rate of about 92 percent, including plea bargains, over the last decade.

Still, a comparison with Allegheny County between 2006 and 2009 showed that in the county including Pittsburgh, 69 of 3,100 criminal trials were dismissed for lack of evidence. That works out to about one in 45 prosecutions.

Over the same period in Cuyahoga County, 164 of 3,400 trials -- about one in 21 -- were tossed out by judges.

The discrepancy is telling but not definitive. One of the more shocking findings of the reporting by Garrett and Caniglia is how inconsistently Cuyahoga County judges applied Rule 29. Some, such as Judges Nancy Margaret Russo and Eileen A. Gallagher, did so with great frequency, acquitting about one in six defendants under Rule 29. Some, such as Judge Michael Donnelly, used it rarely. Judge Peter Corrigan never used it in 107 trials.

Yet surely the weak cases are not all concentrated in the courtrooms of a handful of judges.

The "Presumed guilty" series also revealed some glaring shortcomings at the early stages of a number of criminal cases, when the wheat must be separated from the chaff. Many of these problems could be fixed through grand jury reform, including allowing victims to testify and not subjecting overworked grand jurors to an industrial production line of cases that denies sufficient time for deliberation. **Reforms championed by Mason** to speed up the disposition of low-level felony cases, including getting lawyers and judges assigned before the cases go to a grand jury -- along with open discovery rules recently imposed by the state -- also should help.

But it's ultimately the prosecutor's responsibility to create an environment that is more concerned with justice than notching up convictions. It is time to fix a broken a system that tries to do the right thing the wrong way.

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