

**Require independent, impartial investigation/prosecution of police killings
and
Reopen Michael Brown and Eric Garner homicide cases, as jeopardy has not attached**

WHEREAS there is an epidemic of police misconduct in the United States, including the extrajudicial killing of unarmed civilians by police officers; and

WHEREAS [*The Washington Post* reportedⁱ](#) that 965 people were fatally shot by police in 2015, an average of one person killed by police every 9 hours; and

WHEREAS a greatly disproportionate number of these police killings of civilians are of young black and Latino youth, especially young black and brown men; and

WHEREAS the *Post* reported that “race remains the most volatile flash point in any accounting of police shootings. Although black men make up only 6 percent of the U.S. population, they account for 40 percent of the unarmed men shot to death by police” in 2015; and

Whereas the *Post* reported that “a hugely disproportionate number — 3 in 5 — of those killed after exhibiting less threatening behavior [no attack with a weapon or brandishing a gun] were black or Hispanic;” and

WHEREAS in the vast numbers of these police killings of young black and brown civilians local prosecutors generally failed to prosecute the police officer who shot or killed the civilian, and local grand juries have all too often failed to indict the police officers who did the killing; and

WHEREAS Black Lives Matter activists in cities all over the country carried out marches and rallies and built a movement that inspired broad public support; and

WHEREAS anti-black racism is systemic in the United States, and the Black Lives Matter campaign exposed how local, state, and federal governments, the mainstream news media, and the judicial system actively participate; and

WHEREAS conventional city and county prosecutors have a conflict of interest because of their close association with and reliance on police for gathering evidence in other criminal cases; and

WHEREAS police impunity resulting from the conflict of interest and the systemic racism is inconsistent with equal rights, equal justice under law, and due process of law; and

WHEREAS a grand jury decision not to indict does **not** invoke double jeopardy, and the police officers who killed Eric Garner and Michael Brown **can, to this day, still be indicted and prosecuted**. As stated in a US Supreme Court case, [United States v. John H. Williams, Jr.](#)ⁱⁱ

the grand jury is mentioned in the Bill of Rights, but not in the body of the Constitution. It has not been textually assigned, therefore, to any of the branches described in the first three Articles. It ‘is a constitutional fixture in its own right.’ In fact, the whole theory of its function is that it belongs to no branch of the institutional government, serving as a kind of buffer or referee between the Government and the people. Although the grand jury normally operates, of course, in the courthouse and under judicial auspices, its institutional relationship with the judicial branch has traditionally been, so to speak, at

arm's length. No doubt in view of the grand jury proceeding's status as other than a constituent element of a "criminal prosecutio[n]," U. S. Const., Amdt. VI, we have said that certain constitutional protections afforded defendants in criminal proceedings have no application before that body. **The Double Jeopardy Clause of the Fifth Amendment does not bar a grand jury from returning an indictment when a prior grand jury has refused to do so."**

WHEREAS only after the regular jury in a trial court is sworn in does jeopardy attach, and therefore the police who killed Michael Brown and Eric Garner can still be indicted and the state law criminal cases can be reopened; and

WHEREAS, consistent with the systemic racism, the mainstream news media has suppressed and concealed the fact that a grand jury decision not to indict is not necessarily a final decision and that jeopardy does not attach as a result of a grand jury proceeding; and

WHEREAS an "independent special prosecutor" may be defined as an attorney who, aside from the appointment called for herein, is not him or herself a law enforcement officer, has **no association with or dependence on police in any jurisdiction, and is not a member of any governmental or civic organization that has such association or dependence, past or present;** and

WHEREAS on July 8, 2015, New York Governor Cuomo issued [Executive Order No. 147](#)ⁱⁱⁱ, which appoints the New York State Attorney General as a special prosecutor to take over from the local prosecutor and "to investigate, and if warranted, prosecute certain matters involving the death of an unarmed civilian, whether in custody or not, caused by a law enforcement officer;" and

WHEREAS in most US jurisdictions the state attorney general is the top law enforcement officer of the government, and therefore is not necessarily independent of law enforcement; and

WHEREAS independent special prosecutors may be selected from the competent and outstanding attorneys who normally practice criminal defense or who engage in civil litigation;

NOW THEREFORE BE IT RESOLVED THAT THE NATIONAL LAWYERS GUILD, assembled in its national convention in New York City, August 3-7, 2016, hereby demands and calls for:

- 1) the appointment of an independent special prosecutor to investigate and, where appropriate, prosecute any police officer who shoots, kills, or abuses a civilian in the United States; an "independent special prosecutor" being defined as one who, aside from the appointment called for herein, **does not have any association with or dependence on any police in any jurisdiction, and is not a member of any governmental or civic organization that has such association or dependence, past or present;** AND FURTHER
- 2) that said appointed independent special prosecutor as so defined shall be given the full cooperation of the state police and of the local police department where the shooting, killing, or abuse of a civilian occurred, and sufficient funds from the county treasury

and/or state treasury to also hire outside private investigators to help with said investigation and prosecution; AND FURTHER

- 3) that cases against police cleared by grand juries, including the Eric Garner and Michael Brown cases, shall be reopened, as permitted by [United States v. John H. Williams, Jr.](#), under such appointed independent special prosecutors as so defined.

Implementation: This resolution shall be posted to the NLG website and circulated to the news media and to other legal and civic organizations by the national office and by interested NLG committees and chapters.

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The proponent contacted Pooja Gehi regarding implementation before submitting the resolution.

ⁱ *The Washington Post*, “A year of reckoning: Police fatally shoot nearly 1,000,” December 24, 2015,

<http://www.washingtonpost.com/sf/investigative/2015/12/26/a-year-of-reckoning-police-fatally-shoot-nearly-1000/>

ⁱⁱ *United States v. John H. Williams, Jr.*, 504 U.S. 36 (1992), <https://www.law.cornell.edu/supct/html/90-1972.ZO.html>

ⁱⁱⁱ New York Executive Order 147 <https://www.governor.ny.gov/news/no-147-special-prosecutor-investigate-and-prosecute-matters-relating-deaths-civilians-caused>