

New York Times

The Police Killings Were Years Ago. New Prosecutors Are Reopening Cases.

District attorneys around the country are investigating officers in cases their predecessors had handled, raising the ire of police unions that say it undermines public safety.



By Steve Eder and David D. Kirkpatrick

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The attorney general of Maine declined 14 years ago to prosecute the police officer who had killed Gregori Jackson, 18, a drunk passenger who fled on foot from a routine traffic stop in the town of Waldoboro. (“[Legally justified](#),” the attorney general ruled.)

It was nearly 11 years ago that the district attorney in Westchester County, N.Y., found no crime when an officer, claiming he was about to be run over, had fired at [Danroy Henry Jr.](#), 20. He had bumped his Nissan Altima into the officer outside a bar while police responded to an unrelated scuffle inside. (“[No reasonable cause](#)” to indict, the grand jury concluded.)

And it was two years ago that the Los Angeles County prosecutor cleared the officers who had shot Christopher De’Andre Mitchell, 23. He had been in the driver’s seat of a stolen vehicle with an air rifle between his knees. (“[Acted lawfully in self-defense](#),” the district attorney wrote.)

Now, in the aftermath of protests over racial justice and police abuse, new prosecutors are taking a previously rare step: They are reopening investigations into all three deadly car stops, asking whether the use of force was justified or if the officers should face criminal charges. Mr. Henry and Mr. Mitchell were Black, and Mr. Jackson was white.

District attorneys in Democratic precincts around the country have been re-examining other old use-of-force cases, too — including 340 killings in Los Angeles County alone. They are promising a sharp break from the traditionally close relationship between the police and prosecutors that critics say has long shielded officers from accountability.

“For 200 years in this country we have been electing one kind of prosecutor,” said José Garza, who last fall was elected district attorney of Travis County, Texas, which includes Austin. But since the killing of George Floyd, he added, “People across the country have spoken up loudly and clearly to say they want a new way of being policed.”

So far, Mr. Garza’s team has persuaded grand juries to hand down 11 indictments against officers — including at least six for use-of-force incidents in 2019 and 2020 for which his predecessor had not sought charges.

The reviews are arousing furious resistance from police unions and conservative district attorneys, who call them political stunts that demoralize officers and are unlikely to sway trial court juries. Unions in Austin, Los Angeles, [San Francisco](#) and Philadelphia have backed campaigns to oust the top prosecutors.

At the same time, [rising crime rates](#) across the country are provoking a backlash against calls from last year’s protests to rein in the police.

“To go back and open up all the cases, because you have an absolute grudge against police officers and you’re trying to carry a badge of honor — ‘Look at me, look at me, I’m going to prosecute police officers, I’m going to hold them accountable’ — is turning the table completely upside down,” said Todd Spitzer, the district attorney of Orange County, Calif. A Republican, he is an outspoken supporter of the union-backed campaign to recall his Democratic counterpart in nearby Los Angeles.

“These counties where the ‘woke D.A.s’ are elected,” Mr. Spitzer said, “they are utterly destroying police morale. They are making it impossible to recruit police.”

The number of progressive district attorneys vowing new accountability for police has grown from a first wave of 14 in 2016 to more than 70, representing one-fifth of the U.S. population, according to Fair and Just Prosecution, a group that supports criminal justice reforms. Nearly half of the prosecutors are women, and nearly half are people of color.

Bringing charges against police officers for old use-of-force cases — especially those formally closed by their predecessors — is among the boldest of a range of changes many are seeking. Other policies have included compiling lists of officers deemed discredited as witnesses, requiring a search for corroboration to bring charges of resisting arrest, or reassessing past convictions for potential exonerations or sentence reductions.

Legal scholars say the efforts amount to a decisive test of the criminal justice system. “The stakes are enormous,” said Erwin Chemerinsky, the dean of the University of California, Berkeley School of Law and a member of a panel advising the Los Angeles

district attorney on the review of past use-of-force cases. Noting the election of the progressive prosecutors coincides with increased awareness about officer misconduct, he asked, “Will these combine to reform policing, or will we just revert to where we were?”

The progressive prosecutors reflect “the anti-cop political moment,” said Hannah E. Meyers, director of policing research at the conservative Manhattan Institute. “But if we are serious about reform,” she asked, “is this endeavor really the way to have a system for putting the best cops in those positions and for justice when police act badly?”

Legal codes and court precedents generally allow police to use lethal force if they reasonably believe it necessary to defend themselves or others from imminent harm. Persuading a jury that an officer’s professed fear was unreasonable can be a high hurdle, prosecutors often say, especially in the context of vehicle stops, where police training and culture typically overstate the dangers to officers.

A recent [New York Times investigation](#) found that since the fall of 2016, officers have killed more than 400 drivers or passengers who were not wielding a gun or a knife, or under pursuit for a violent crime. In about 250 of the cases, officers later claimed a driver used a [vehicle as a weapon](#), and most officers killed with impunity: Only five have been convicted of crimes. (About two dozen cases are pending.)

One of those rare [convictions came this fall](#) in the 2018 police shooting in Danville, Calif., of a driver, Laudemer Arboleda, who was 33 and mentally ill. He had ignored an attempted traffic stop and continued to drive slowly when he was fatally shot by Officer Andrew Hall. Mr. Hall claimed Mr. Arboleda was attempting to use his vehicle as a weapon. The officer returned to duty, and in March, he fatally shot a homeless man who was holding a folding knife during an encounter in the street.

District Attorney Diana Becton of Contra Costa County charged Mr. Hall [in April](#) for the death of Mr. Arboleda. He was convicted in October of felony assault with a semiautomatic firearm. (The jury deadlocked on a manslaughter charge; Ms. Becton’s office is still investigating the killing of the homeless man.)

“Vehicle cases can be difficult,” she said. “But we also know that we now have a conviction on one of the charges.”

In a review of more than 150 formal statements or public comments from prosecutors declining to bring charges for the deadly use of force against unarmed motorists, The Times found that almost all either characterized the motorist as a potential menace or emphasized that the legal standards left prosecutors few options.

But the new prosecutors say they were elected on promises to hold law enforcement officers accountable. In several districts — including Los Angeles and San Francisco — they pledged [not to accept campaign contributions](#) from police unions.

In a striking departure, several of the new district attorneys have little experience as prosecutors. Mr. Garza, of Travis County, Texas, was a former public defender who led a community organization for migrant workers before running for district attorney. Others were defense attorneys or civil rights lawyers, like Larry Krasner, the Philadelphia district attorney, who as a candidate was known for having [sued the police 75 times](#).

Some district attorneys have responded to the urging of families to reopen cases of relatives killed by police years ago. “A loss can be even harder when the killer is law enforcement — you know, the entity that’s there to protect and serve,” said Rachael Rollins, the district attorney in Suffolk County, Mass., which includes Boston, who agreed to revisit [three such cases](#).

But a review does not necessarily produce a new result: A prosecutor’s re-investigation of the 2014 police shooting of Michael Brown in Ferguson, Mo., [ended last year](#) without charging the officer.

Dozens of staff lawyers who object to the new approach have departed from several of the offices. At the same time, several district attorneys have [brought in new staff](#) lawyers, investigators or special prosecutors to carry out the reviews.

In Los Angeles, [District Attorney George Gascón](#) has enlisted a panel of legal experts and community advisers as well as a clinic at the University of California, Irvine law school to review as many as 340 killings going back to 2012 that his predecessor deemed justified. (Statutes of limitations can bar prosecutors from seeking certain charges in older cases, although generally not for murder.)

He [promised during his campaign](#) to reopen at least four specific cases, including the 2018 killing of Mr. Mitchell, who had the air rifle between his knees. To bring any charges, he has recruited the former federal prosecutor Lawrence Middleton, who handled the infamous Rodney King beating case in 1992.

Mr. Garza, in Travis County, promised to bring every officer-involved shooting to a grand jury, and his staff discontinued the past practice of working with officers to prepare them for the process.

He has already secured four indictments this year of officers for a killing and a beating from 2019 that the police department’s special investigations and internal affairs units had deemed justified and his predecessor never took up. His office has also won indictments against officers for the 2019 killing of Javier Ambler II, who was repeatedly stunned with a Taser after he [fled a traffic stop](#), as well as the 2020 shooting of Mike Ramos, who officers said [had driven his car at them](#). Both men were unarmed.

Police advocates argue that re-examining old police use-of-force cases without new evidence is like putting an officer on trial twice for the same actions. In Maine, where the prosecutor Natasha Irving prodded the attorney general to reopen the passenger killing case from 2007, officers are wondering who might be next, said Mike Edes, executive director of the Maine chapter of the Fraternal Order of Police and a retired officer.

“I was involved in a shooting in 2004. If she doesn’t like the outcome, is she going to go back 17 years and reinvestigate it?” he asked. “Where’s this going to stop with her?”

Others say that the prosecution of old cases is diminishing public safety by making officers hesitate. “Every interaction you have with a citizen is a chance for something to go wrong and a chance for you to be indicted by Garza,” said Ken Ervin, a lawyer who represents the police officers in Austin facing criminal charges. “You have some officers who are checked out and they just sit in the cars and they do nothing.”

In a [public letter](#) to the Austin city manager released in July, District Attorney Garza also complained of “increasing incidents of some Austin Police Department officers declining to investigate suspected criminal activity and suggesting to community members it is because our office will not prosecute the cases.”

The president of the police union had urged officers to stop “[active enforcement](#),” Mr. Garza noted, asserting that “rogue” officers had answered that call.

Yet some prosecutors reviewing old cases were elected with the support of the police unions.

“I don’t define myself as a progressive prosecutor,” said Fani T. Willis, a Democrat who was elected district attorney in Fulton County, Ga., last year with police union backing. “I just define myself as doing what’s right.”

Since taking office in January, she has begun reviewing 50 use-of-force cases and seven death-in-custody cases going back to 2016 that her predecessor had not addressed; she has so far landed [indictments](#) in 13 of them. Six officers were [indicted in November](#) for a jailhouse death in 2018. They had allegedly shouted that it was “Taser Tuesday” as they tortured and killed Antonio May, 32, arrested for throwing rocks at a building.

“There were too many cases where nothing had been done,” said Ms. Willis, noting her office had also cleared more than 20 officers. “Where there is no courage, nothing happens.”

Steve Eder is an investigative reporter for The Times. Most recently he has reported on policing in America, including the power of police unions, disciplinary proceedings, and state reforms. [@steveeder](#)

David D. Kirkpatrick is a national correspondent based in New York and the author of ["Into the Hands of the Soldiers: Freedom and Chaos in Egypt and the Middle East."](#) In 2020 he shared a Pulitzer Prize for reporting on covert Russian interference in other governments and as the Cairo bureau chief from 2011 to 2015 he led coverage of the Arab Spring uprisings. [@ddknyt](#) · [Facebook](#)

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