

BEFORE THE STATE OF NEW YORK GRIEVANCE COMMITTEE
FOR THE SECOND, ELEVENTH & THIRTEENTH JUDICIAL DISTRICTS

STATEN ISLAND BRANCH OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,

COMPLAINANT-GRIEVANT

COMPLAINT-GRIEVANCE

RE: CONDUCT OF RICHMOND COUNTY
DISTRICT ATTORNEY DANIEL DONOVAN
IN THE MATTER OF THE DEATH OF
ERIC GARNER

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TABLE OF CONTENTS

	PAGE
TABLE OF CONTENTS	2
FORE-THOUGHT	3
I. INTRODUCTION	4
II. THE COMPLAINANT-GRIEVANT PARTY	7
III. ALLEGATIONS	11
IV. RICHMOND COUNTY DISTRICT ATTORNEY DANIEL DONOVAN'S ACTIONS AND INACTIONS WHICH, IN THE CONTEXT OF THE FOREGOING, FORM THE PREDICATE FOR THE COMPLAINANT-GRIEVANT'S COMPLAINT-GRIEVANCE TO THIS COMMITTEE AND THE REQUEST THAT HE BE DISCIPLINED FOR THE DERELICTION OF HIS DUTIES AND FUNCTIONS AS <i>ALL</i> "THE PEOPLE'S" PROSECUTOR	18
V. THE APPLICABLE RULES OF PROFESSIONAL CONDUCT WHICH WERE VIOLATED BY RICHMOND COUNTY DISTRICT ATTORNEY DANIEL DONOVAN	41
VI. THE CONSTITUTIONAL PROVISIONS WHICH WERE VIOLATED BY RICHMOND COUNTY DISTRICT ATTORNEY DANIEL DONOVAN	44
VII. RELIEF	47
AFTER-THOUGHTS	50
VERIFICATION	52

FORE-THOUGHT

“the terrible, the incomprehensible way one’s most banal, incidental, even comical choices achieve the most disproportionate result.”*

Indignation by Philip Roth

*This Complaint-Grievance arises out of and derives not from banal or incidental choices; and certainly not from comical choices. Rather it arises out of and derives from the intentional, reckless, and deliberately indifferent choices made by New York City Police Officer Daniel Pantaleo and other then present New York City Police Officers on July 17, 2014 and the terrible, incomprehensible way those intentional, reckless, and deliberately indifferent choices and the conduct of New York City Police Officers based on those choices achieved the most disproportionate result: the death of Eric Garner.

The *focus of this Complaint-Grievance* arises out of and derives not from banal or incidental choices; and certainly not comical choices. Rather it arises out of and derives from the post July 17, 2014 intentional, reckless, and deliberately indifferent choices of Richmond County District Attorney Daniel Donovan and the terrible, incomprehensible way that Richmond County District Attorney Daniel Donovan’s choices and his conduct based on those choices achieved the most disproportionate and unjust results: (*a*) the failure to secure an indictment for the more likely than less likely criminal conduct of New York City Police Officer Daniel Pantaleo and other then present New York City Police Officers that caused the death of Eric Garner; (*b*) and inter-related thereto and because of that failure, the compromising of the integrity of the administration of his very office, itself; and the compromising of the integrity of the administration of the over-arching New York State criminal justice system, of which he is a primary participant and a supposed primary guarantor of that integrity.

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I. INTRODUCTION

1. This Complaint-Grievance is brought by the Complaint-Grievant Staten Island Branch of the National Association for the Advancement of Colored People against Daniel Donovan, the Richmond County, New York District Attorney.
2. The Complainant-Grievant is the Staten Island Branch of the National Association for the Advancement of Colored People (hereinafter referred to as the NAACP).
3. As more fully set forth and described hereinafter, the Staten Island NAACP Branch has a direct and actual vested interest in making sure and taking efforts to guarantee that the over-arching New York State criminal justice system, of which the Richmond County, New York criminal justice system is a part, operates in a fair and racially non discriminatory manner and fashion. The Staten Island NAACP Branch has a direct and vested interest in making sure and taking efforts to guarantee that *all* citizens who reside in Richmond County receive equal justice under the law and believe that they are receiving equal justice under the law; and that *all* individuals, who are implicated by the over-arching New York State criminal justice system of which the Richmond County criminal justice system is a part, are treated equally in the criminal justice system and that they believe that they are treated equally.
4. As such and as more fully set forth and described hereinafter, the Complainant-Grievant has standing to bring this grievance before this Committee.
5. As more fully described and set forth hereinafter, the genesis of this Complaint-Grievance derives from and arises out of the death of Eric Garner on July 17, 2014 and the choices, actions, inactions, and conduct of Richmond County District Attorney Daniel Donovan associated therewith.

6. As more fully set forth and described hereinafter, the thrust of the Complaint-Grievance is that Richmond County District Attorney Daniel Donovan breached his duties, obligations, and responsibilities under law and he breached the Oath of his Office and the Code of Professional Responsibility which govern his conduct: (a) when, initially and because of personal and business conflicts of interest, he declined to voluntarily withdraw from participation in the matter involving the death of Eric Garner and when he failed ask the Governor of the State of New York to appoint a special prosecutor in his stead; and (b) when, thereafter and because of his choices and his actions based thereon, he failed to secure an indictment of several New York City Police Officers involved in the death of Eric Garner (including *but not limited to* New York City Police Officer Daniel Pantaleo).

7. Because of his choices and the actions which he took based on those choices, actions he compromised and prejudiced the integrity of the administration of the State's criminal justice system of which he is a primary participant and guarantor.

8. In substance and as more fully set forth and described hereinafter, the Complainant-Grievant Staten Island NAACP Branch contends that Richmond County District Attorney Daniel Donovan breached his fiduciary responsibilities: (a) to Eric Garner (in death) who, it is submitted, was the victim (in life) of a probable cause based crime committed by several New York City Police Officers including *but not limited to* New York City Police Officer Daniel Pantaleo; and (b) to Eric Garner's surviving family members,

9. Moreover and as more fully set forth and described hereinafter, the Complainant-Grievant Staten Island NAACP Branch contends that Richmond County District Attorney Daniel Donovan, as "*the people's*" attorney/prosecutor for all of "*the people*" of the County of Richmond, breached his fiduciary responsibilities to: (a) all of the residents and citizens of Richmond County, Staten Island, New York; (b) all of the residents and citizens of the City of New York; (c) all of the residents and citizens of the State of New York; and (d) each and every person in this nation. He did so by compromising the integrity of the administration of the New York State criminal justice system of which the Richmond County criminal justice system is a part.

10. The Complainant-Grievant requests that the Grievance Committee, to which this Complaint-Grievance is submitted, find and conclude that Richmond County District Attorney Daniel Donovan failed to carry out his duties and functions as related to the death of Eric Garner in a manner and fashion required of him: (a) *under the laws and Constitution of the State of New York and the laws and Constitution of the United States*; (b) *under the oath of his Office* as Richmond County District Attorney; (c) under relevant ethical standards; (d) and *under the Rules of Professional Conduct* which govern him as an attorney duly admitted to practice law in the State of New York in the performance of his duties and functions as Richmond County, New York District Attorney ("the people's attorney" as the public attorney-prosecutor for all of "the people").

11. As a consequence of failing to carry out his duties and functions in a manner and fashion required of him under the law and under the Rules of Professional Responsibility which govern him as Richmond County District Attorney, Richmond County District Attorney Daniel Donovan denied equal treatment and justice under the law to the late Eric Garner (a right to which he was entitled even in death as a victim of acts taken against him in his life, which acts that caused Eric Garner's death and were and continue to be more likely than less likely criminal in nature); and denied equal treatment and equal justice under the law to Eric Garner's surviving family members.

12. Ultimately and as is hereinafter set forth and more fully described, the failures of Richmond County District Attorney Daniel Donovan and all that flows therefrom derive from the core basic fact that, from the outset in addressing the death of Eric Garner literally at and by the hands of New York City Police Officers, Richmond County District Attorney Daniel Donovan had a real and actual conflict of personal and business interests.

13. When Richmond County District Attorney Daniel Donovan failed to acknowledge such notwithstanding the obvious and when he failed to act on such and voluntarily recuse himself in favor of a special prosecutor to be appointed by the Governor of the State of New York, it was inevitable that he would compromise the integrity of the administration of the over-arching New York State criminal justice system (of which the Richmond County justice system is a part) that flowed from his continued involvement.

14. The core conflict of personal and business interests made it impossible for him to carry out his duties and functions in a fair and impartial manner and fashion and to implement the New York State criminal justice systems in a fair, impartial, racially discriminatory free manner and fashion, something which he was obligated to do but was unable to do because of the conflicts in interest (personal and business in nature).

15. Accordingly and because Richmond County District Attorney Daniel Donovan did not disqualify himself from participation in the matter of Eric Garner's death and did not ask the Governor to appoint a special prosecutor to address the death of Eric Garner, Richmond County District Attorney Daniel Donovan compromised the very integrity of the administration of the New York State criminal justice system of which Richmond County is a part; and he did great damage to the New York State criminal justice system and to the Office of the Richmond County District Attorney itself in a way unlikely to ever be undone. Such damaged and injured *all* of the people of Richmond County and of the State of New York.

16. It is unlikely that the damage that has occurred will be undone unless –and only unless, this Committee undertakes to address such.

17. Otherwise Richmond County District Attorney Daniel Donovan will have been allowed to act with impunity and he will be emboldened to act likewise in the future when, sadly and unfortunately, another matter comparable to Eric Garner's death arises and the people of the State of New York, of the City of New York, of the County of

Richmond will once again be confronted with the same issues and the same drastic consequences.

18. Lest there be any doubt about the thrust of this Complaint-Grievance, this matter is not about abstract principles.

19. Rather this Complaint-Grievance is about the real life failures by Richmond County District Attorney Daniel Donovan to meet his obligations and duties as the public's attorney-prosecutor to *all* of the people of Richmond County (Black, Brown, white, and other) including to Eric Garner, the Black victim of the conduct of New York City Police Officers which conduct caused the death of said Eric Garner and which conduct was more likely than not likely criminal in nature.

II. THE COMPLAINANT-GRIEVANT PARTY

20. The National Association for the Advancement of Colored People (hereinafter referred to as the NAACP) is the nation's oldest, largest, and most respected civil rights organization. It is a membership organization with "branches" located in communities throughout all of the states of the nation and in locations throughout the world.

21. The NAACP is a grassroots based civil rights organization. It operates from the bottom up.

22. The NAACP's more than half million members and supporters throughout the United States and the world are the premier advocates for civil and constitutional rights of people of color in their respective communities including, among those rights, the right to equal justice under the law. Such right includes the right to racially non discriminatory equal justice under the law in all of the aspects of the administration and operation of the criminal justice system of our nation and in all of the aspects of the administration and operation of criminal justice systems of the various states throughout the nation including the State of New York.

23. As set forth previously, the context of this specific Complaint-Grievance derives from the death of an African American man, Eric Garner, and the failure of the criminal justice system to adequately address such through an indictment and prosecution of white New York City Police Officer Officer Daniel Pantaleo who applied a New York City Police Department banned death causing choke hold; and the indictment and prosecution of other then present New York City Police Officers (among them a command officer—Sergeant), almost all of whom were white, who enabled New York City Police Officer Daniel Pantaleo to do such by their failure to intervene and to prevent such and/or by their active participation in the use and application of unnecessary, unreasonable, and excessive physical force that compromised life of Eric Garner and, together with the excessive force conduct of New York City Police Officer Daniel Pantaleo, caused Eric Garner's death.

24. It is appropriate and not insignificant in the context of the efforts of the Staten Island NAACP Branch herein to note that the NAACP, of which the Complaint-Grievant Staten Island Branch is a part, was formed and founded on February 12, 1909 partly in response to the continuing horrific practice of the lynching of Black Americans which were taking place throughout the nation; and in response to the 1908 race riot in Springfield, Illinois, the capital of Illinois and the resting place of President Abraham Lincoln, associated with the lynching practice.

25. The Springfield riot arose out of the continued failure of the nation's law enforcement authorities to address the lynching of Black Americans through the criminal justice system processes available to do so but which were being applied, or actually not applied at all in a racist and racially discriminatory unequal manner and fashion because Black lives did not matter.

26. In other words, the NAACP was founded to provide organized efforts through democratic processes in order to obtain accountability for, among other things, the violence being committed against Black Americans and the failure of the nation and its States to provide some form of accountability for such.

27. Appalled at the violence being committed against Black people, seven African Americans, among them W.E.B. Du Bois, Ida B. Wells-Barnett, and Mary Church Terrell, joined with a group of white individuals, among them Mary White Ovington and Oswald Garrison Villard (both of whom were descendants of abolitionists), and signed a "call" which echoed the focus of Du Bois' Niagara Movement that began in 1905.

28. The Niagara Movement and the founding of the NAACP had as their stated goal to secure for Black Americans and other people of color the nation's post Civil War promises of full rights for *all* people. Those promises, in all of its aspects, were encompassed by the nation at the conclusion of the Civil War in the Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution.

29. The "call" and the founding of the NAACP were for the stated purpose of achieving, in the realities of the everyday lives of *all* Black Americans, the abstract promises encompassed within the afore-mentioned post Civil War Amendments that guaranteed equal protection of law to each and every Black American citizen but which abstract promises were being disregarded, ignored, breached and denied to Black Americans every day and in every way throughout this nation simply because the lives of Black Americans did not matter.

30. The promises, as contained in those Amendments and as propelled by our young nation's bloody civil war, were that race would no longer matter in our nation and would no longer define us as we grew and evolved as a nation. Unfortunately, race very much still matters in our nation and race very much still defines the very fabric of our nation these many decades and centuries since the adoption of those post Civil War Amendments and the promises encompassed therein.

31. Whether rightly or wrongly—and we believe it was and still is rightly so, there existed at the time of the death of Eric Garner a longstanding belief among substantial portions of the communities of color throughout the State of New York and throughout the nation as a whole that the nation’s criminal justice systems, among them New York State’s criminal justice systems, among them New York State’s criminal justice system, were not being administered in a manner and fashion that was fair, equal, and non discriminatory.

32. Rather, a well based belief existed then—and still does exist now (even more so)- that *race matters* in the administration of the nation’s criminal justice systems, among them New York State’s criminal justice system; and that they have been and they are continuing to be administered unequally and in a racially discriminatory manner and fashion.

33. Thus the belief existed then—at the time of Eric Garner’s death, and exists now even more so in light of how the criminal justice system was administered with respect to Eric Garner’s death, that, if you are white, your conduct is “right”, particularly if you are a law enforcement officer; and, if you are Black or Brown or any person of color, your conduct is “wrong”, especially because you are not a law enforcement officer.

34. The NAACP seeks to remove all aspects of racial discrimination and unequal treatment because of race through the democratic processes for the benefit of *all* African Americans and for *all* people of color and so that all people of color (Black, Brown, and other) will have equal treatment under law and will have all of the rights that white individuals take for granted but which people of color, all people of color, must fight to attain and to maintain.

35. The goal has yet to be fully realized and this Complaint-Grievance presents another effort on the part of the NAACP in the on-going struggle to achieve that elusive goal-to hold the nation accountable for its still unfulfilled, long ago made post Civil War promises.

36. The Staten Island NAACP Branch is one of several NAACP Branches in the City of New York dedicated to the goals of the NAACP as described above through grassroots efforts. The Staten Island NAACP Branch and all of the other New York City NAACP Branches act under the auspices of both the national NAACP and the New York State Conference of NAACP Branches.

37. Among other of the goals of the NAACP’s grassroots grounded Staten Island Branch is the goal to remove all aspects of unequal treatment due to race in, among others, the criminal justice system of the State of New York, of which the criminal justice system of Richmond County is a part.

38. The Staten Island NAACP Branch is composed of many members, significant numbers of whom are African American males.

39. The Staten Island NAACP Branch does not advocate, however, solely for its members.

40. Whether a member or not, the Staten Island NAACP Branch has a direct and vested interest in advocating for and on behalf of *all* African American citizens and residents of Richmond County, New York and of *all* people of color who are residents and citizens of Richmond County including the many tens of thousands of Black and Brown males who reside in Richmond County.

41. The unfortunate reality is that many of the African American male members of the Staten Island NAACP Branch and many of the thousands of Black and Brown male citizens and residents of Staten Island are, disproportionate to their numbers in the overall population of Richmond County, more likely than their white counterparts to be engaged by New York City Police Officers than are white individuals.

42. They are, disproportionate to their numbers in the overall population of Richmond County, more likely than their white counterparts to become entangled in the New York State criminal justice system of which the Richmond County criminal justice system is a part.

43. They are more likely, disproportionate to their numbers in the overall population of Richmond County, than their white counterparts, to be victims of police abuse and, potentially, the application of excessive force—sometimes even deadly excessive force, at and by the hands of New York City Police Officers (Richmond County/Staten Island being one of the multiple counties that comprise the City of New York), more often than not white New York City Police Officers.

44. Eric Garner was one such African American male who was the subject of deadly excessive force literally by and at the hands of white New York City Police Officers and the abusive application of their power in the inter-actions they had with him (as if his life did not matter).

45. Given the involvement of the Staten Island NAACP Branch in the everyday realities and lives of African American citizens and residents of Richmond County and other people of color who are residents and citizens of Richmond County, the Staten Island NAACP Branch is compelled to submit this Complaint-Grievance against Richmond County District Attorney Daniel Donovan for the gross dereliction of his duties and functions in addressing the wrongful conduct of the New York City Police Officers whose conduct caused the death of Eric Garner; and whose conduct is, as self evidently memorialized in a contemporaneously recorded video/audio recording of the conduct as applied to Eric Garner by New York City Police Officers, more likely than less likely to be criminal conduct.

46. The failure of the Staten Island NAACP Branch to pursue this Complaint-Grievance would be an abdication of its duties and obligations to advocate on behalf of all Black and Brown people and other people of color—members and non members alike,

and especially those who do not have the wherewithal or the voice in themselves or the capabilities and/or abilities otherwise to seek redress for the miscarriage of justice in Eric Garner's matter and other comparable matters that will likely arise in the future as unfortunate and sad as it is to have to make that assessment (just as comparable matters have, unfortunately, occurred far too often in the past).

47. The failure of the Staten Island NAACP Branch to pursue this Complaint-Grievance would embolden Richmond County District Attorney Daniel Donovan and all similarly situated local prosecutors throughout communities of the State of New York, all of whom are the supposed guarantors of the integrity of the over-arching New York State's criminal justice system, to compromise the integrity of the administration of that system yet again when in our future another event comparable the Eric Garner death matter arises (as unfortunately and sadly as such will inevitably be the case).

48. Such will inevitably lead to even further cynicism and the loss of faith in the State's criminal justice system and the reinforcement of the belief by far too many in our State and in our nation that, while everything changes, nothing changes; and the belief that the criminal justice system does not work to dispense the justice for and on behalf of Black and Brown people and other people of color because the lives of Black and Brown people and the lives of other people of color just do not matter.

49. The Staten Island NAACP Branch pursues this Complaint-Grievance to remind Richmond County District Attorney Daniel Donovan and other similarly situated prosecutors throughout this State and yes the nation and to remind New York City Police Officers and law enforcement officers throughout this State and yes throughout the nation that Black and Brown lives and the lives of other people of color do matter and that things must change. It can no longer be "business as usual".

50. This Complaint-Grievance and the effort encompassed herein reflect some of the change which is in order and which must take place. In one word the Complaint-Grievance is an effort to achieve some accountability for the miscarriage of justice in the criminal justice system which, in the business as usual model, has been sorely lacking.

III. ALLEGATIONS

51. On July 17, 2014, Eric Garner was choked to death.

52. At the time of his death, Eric Garner was an African American citizen and resident of Staten Island, the City of New York, and the County of Richmond, State of New York.

53. At the time of his death, Eric Garner was forty three years of age.

54. At the time of his death, Eric Garner was a husband, a father, and a friend to many. A friend who knew Eric Garner described him this way (as quoted in a New York Daily News column, December 7, 2014, by Denis Hamil): "He was a humble, kindhearted,

caring guy. His wife and his mom loved him. His kids adored him. He was Santa Claus all year round”.

55. Eric Garner was a large man—one could/might describe him as obese. He weighed up-wards of three hundred and fifty pounds.

56. Eric Garner had medical problems, among them diabetes and asthma, all associated with his excessive weight.

57. Prior to the eventful July 17, 2014 date, Eric Garner had been stopped on many occasions by New York City Police Officers, allegedly for selling loose cigarettes (a/k/a “loosies”), a “quality of life” *offense* which is *not* even a crime.

58. Eric Garner felt that he was a victim of police harassment by New York City Police Officers over a long period of time.

59. During the day light hours of July 17, 2014, Eric Garner was approached by several New York City Police Officers, one of whom was New York City Police Officer Daniel Pantaleo.

60. Eric Garner and the several New York City Police Officers came together in the vicinity of the intersection where Bay Street meets Victory Boulevard.

61. New York City Police Officer Daniel Pantaleo is a white individual (as were most of the several other New York City Police Officers who were then present).

62. It is believed that Daniel Pantaleo, who is twenty nine years old, had been a New York City Police Officer for approximately eight years.

63. A command Officer (a Sergeant) was present at the scene throughout the event as it unfolded.

64. It is believed, too, that New York City Police Officer Daniel Pantaleo had been the subject of at least two prior complaints of alleged misconduct attributed to him in the performance of his duties and functions as a New York City Police Officer.

65. It is believed that New York City Police Officer Daniel Pantaleo has been named as a Defendant party in two federal civil rights lawsuits growing out of his alleged misconduct in the performance of his duties and functions when he inter-acted with Black and Brown males

66. It is believed that the City of New York settled one of the federal lawsuits involving New York City Police Officer Daniel Pantaleo.

67. In other words, on July 17, 2014, Daniel Pantaleo was not the classic “boy scout” as a New York City Police Officer (as he has, in substance, been described by the

President of the Policemen's Benevolent Association, Patrick Lynch) even if he might have been a boy scout when he was growing up.

68. Rather, it is believed that New York City Police Officer Daniel Pantaleo was known to be a New York City Police Officer who *aggressively enforced the New York City Police Department's longstanding and existing "broken-windows"/"quality of life" offense enforcement initiative/ policy and practice; and who, in doing so, had made hundreds of "broken window"/"quality of life" "petty", non criminal offense arrests over and during the course of his approximately eight year career in the New York City Police Department.*

69. It is believed that the engagement between Eric Garner and the New York City Police Officers grew out of the New York City Police Officers' stop of said Eric Garner for an alleged minor, "broken window"/"quality of life" non criminal violation of law related to an alleged sale of a loose cigarette.

70. It is believed that no loose cigarettes were ever found on Eric Garner.

71. It is believed that, when he was stopped and detained by New York City Police Officers on July 17, 2014, Eric Garner informed the New York City Police Officers that he had not done anything wrong; that he had not sold any loose cigarettes (as was alleged by the New York City Police Officers); and that he was, in substance, tired of being stopped, detained, and interrogated by New York City Police Officers—in substance that he was tired of being harassed; and that it had to stop.

72. Eric Garner took no physical actions of any consequence when he was engaged in speaking with the New York City Police Officers. He spoke in a reasonable manner and fashion and in a reasonable tone of voice and otherwise acted reasonably.

73. The situation escalated not because Eric Garner did or said anything unreasonable but only when and because New York City Police Officer Daniel Pantaleo vigorously, aggressively, unnecessarily, unreasonably, unjustifiably, and excessively grabbed Eric Garner around and about the neck and applied a choke hold to and on Eric Garner's neck in a manner and fashion which compressed Eric Garner's neck and, by such, inhibited Eric Garner's free flow of air and impeded Eric Garner's ability to breathe.

74. In short, New York City Police Officer Pantaleo was choking Eric Garner and doing such in a sustained manner and fashion that jeopardized the health and well being and very life of said Eric Garner.

75. In other words, it is believed that New York City Police Officer Pantaleo was, in substance, choking Eric Garner to death.

76. During the course of the event that followed the initiation of the excessive and New York City Police Department banned choke hold force that New York City Police Officer

Pantaleo applied to and on the neck of Eric Garner, Eric Garner cried out—it is believed *eleven times*: “I can’t breathe”.

77. Notwithstanding such, said New York City Police Officer Daniel Pantaleo continued to engage in and sustain the choke hold force to and on Eric Garner’s neck which was constricting the free flow of air to said Eric Garner and which was preventing him from breathing and, in effect, which was causing Eric Garner’s death.

78. The choke hold force, which was applied in a sustained fashion over a period of time by New York City Police Officer Daniel Pantaleo to and on the neck of Eric Garner, had been banned by the New York City Police Department long before Daniel Pantaleo became a New York City Police Officer.

79. At the time that New York City Police Officer Daniel Pantaleo applied the banned choke hold force to and on the neck of Eric Garner over a sustained period, New York City Police Officer Daniel Pantaleo had been trained that a choke hold, such as that which he was applying to and on the neck of Eric Garner, was banned by the New York City Police Department as a legitimate and authorized use of force by New York City Police Officers.

80. Notwithstanding that New York City Police Officer Daniel Pantaleo knew that the choke hold which he was applying to and on the neck of Eric Garner had been banned and that he had been trained accordingly in that regard, New York City Police Officer Daniel Pantaleo applied the choke hold to and on the neck of Eric Garner for a sustained period, even while Eric Garner was crying out (as best he could) over and over and over that he could not breathe (*eleven times* over the course of the event).

81. Although the New York City Police Department policy and training does permit a “take down”, a “take down” procedure is far different than a choke hold which is not a permissible means to take an individual down. A choke hold is designed to choke an individual. A choke hold, when applied, can cause death.

82. Such is why the New York City Police Department long ago banned the choke hold as a matter of policy and trained its New York City Police Officers that the choke hold was not authorized and was not a legitimate form of force or a legitimate takedown procedure to be utilized by members of the New York City Police Department in the performance of their duties and functions on “the street”.

83. New York City Police Officer Daniel Pantaleo knew the difference between a “take down procedure” and the banned choke hold when, over a sustained period, he applied a choke hold to Eric Garner even while, during the sustained period of time that New York City Police Officer Daniel Pantaleo was applying the choke hold to and on Eric Garner’s neck, Eric Garner cried out numerous times that: “I can’t breathe”.

84. During the sustained period of time when New York City Police Officer Daniel Pantaleo was choking Eric Garner and Eric Garner was crying out numerous times that he

could not breathe, other present New York City Police Officers, including a command Officer (Sergeant), did nothing to intervene on behalf of said Eric Garner and to prevent New York City Police Officer Daniel Pantaleo from continuing to act in the physically aggressive and unreasonable and unnecessary and excessive application of the banned choke hold force to and on Eric Garner's neck.

85. In substance, New York City Police Officer Daniel Pantaleo was choking Eric Garner to death and no other New York City Police Officer then present, including a command New York City Police Officer (a Sergeant), did anything to intervene and to stop Daniel Pantaleo from choking Eric Garner to death.

86. There was no justification whatsoever for the excessive force choking of Eric Garner by New York City Police Officer Daniel Pantaleo.

87. Furthermore, there was no justifiable reason whatsoever why the New York City Police Officers then present, including a command Officer (Sergeant), did nothing to intervene and stop New York City Police Officer Daniel Pantaleo from employing the banned choke hold to and on Eric' Garners neck over a sustained period.

88. New York City Police Officer Daniel Pantaleo continued to apply the check hold to and on the neck of Eric Garner for a sustained period of time this notwithstanding that Eric Garner was crying out on numerous occasions that he could not breathe.

89. Police Officer Daniel Pantaleo applied the choke hold throughout the time that Eric Garner was crying out that he could not breathe.

90. The other available and present New York City Police Officers, including the command Officer (Sergeant), did nothing to intervene and relieve Eric Garner from being choked to death as he was by New York City Police Officer Daniel Pantaleo.

91. Eventually and while Eric Garner was still being subjected to the choke hold force being applied to him by New York City Police Officer Daniel Pantaleo, Eric Garner was propelled to the ground by the New York City Police Officers including New York City Police Officer Pantaleo.

92. While Eric Garner was on the pavement, New York City Police Officers forced themselves on Eric Garner as New York City Police Officer Pantaleo pressed the head of Eric Garner to the pavement.

93. The process described in Paragraph #'s 91 and 92 went on for a period of time all the while after Eric Garner had been choked by New York City Police Officer Pantaleo for a sustained period of time (as described).

94. At no time did the other New York City Police Officers then present at the scene, including the command Officer (Sergeant), undertake to intervene and to assist Eric Garner even though it was apparent to all then present that Eric Garner was in

extraordinary life threatening distress because of the sustained excessive force actions and conduct of New York City Police Officer Daniel Pantaleo when Police Officer Daniel Pantaleo applied a choke hold to and on the neck of Eric Garner over a sustained period of time.

95. When Eric Garner was on the ground, Eric Garner was still trying to tell the Officers that he could not breathe.

96. In sum and substance and as he had been crying out when New York City Police Officer Daniel Pantaleo was applying the banned choke hold to and on the neck of Eric Garner over a sustained period, Eric Garner was crying out that he could not breathe (as he lay on the ground).

97. Yet no New York City Police Officer, including those who had sat on Eric Garner while he was on the ground, did anything, not a one.

98. It took Emergency Medical Service (EMS) personnel many minutes to arrive at the scene (it is believed upwards of nine minutes); and, then, when they arrived at the scene they did absolutely nothing to help Eric Garner who was in a life threatening state—who was in the process of dying. Those EMS were subsequently disciplined for their conduct although it is believed that they continue to work.

99. A bystander shouted out in substance why is no one giving him (Eric Garner) CPR as it was apparent to all –or should have been apparent to all, that Eric Garner was dying if he was not already dead.

100. It is not insignificant that, as early as 1995, a United States Department of Justice bulletin on “positional asphyxia” quoted the New York City Police Department’s guidelines for preventing deaths in custody: “As soon as the subject is handcuffed, get him off his stomach. Turn him on his side or place him in a seated position”.

101. New York City Police Officers present during the event herein described, including the command Officer (a Sergeant), recklessly and with deliberate indifference failed to follow that guideline (described in Paragraph # 100), this after they deliberately failed to intervene when they observed New York City Police Officer Daniel Pantaleo apply the choke hold to and on Eric Garner’s neck over a sustained period and heard Eric Garner cry out numerous times that he could not breathe.

102. It is believed that Doctor Michael Baden, a former chief Medical Examiner of the City of New York and a world acclaimed forensic pathologist, opined to the New York Times: “Obese people especially lying face down, prone, are unable to breathe when enough pressure is put on their back. The pressure prevents the diaphragm from going up and down and he can’t inhale and exhale.”

103. Such is what Eric Garner was, in sum and substance, crying out when he was being choked to death by New York City Police Officer Daniel Pantaleo and when Eric

Garner was on the pavement and being pressed by New York City Police Officers; and when, in both contexts, no New York City Police Officer intervened to relieve Eric Garner from the death inducing distress in which he had been placed by the actions and conduct of New York City Police Officer Daniel Pantaleo and other then present New York City Police Officers including a command Officer (Sergeant).

104. The event between New York City Police Officer Daniel Pantaleo and Eric Garner and the presence of the other New York City Police Officers showing their total inaction and disregard for what they were observing take place –the choking to death of Eric Garner by New York City Police Officer Daniel Pantaleo, was all recorded on video with audio.

105. Such video/audio recording includes, as well, what occurred when Eric Garner was taken down, after having been subjected to the sustained choke hold by New York City Police Officer Pantaleo, and Eric Garner was then on the pavement.

106. The audio to the video clearly records the *eleven* cries of Mr. Garner that: “I can’t breathe”.

107. Eric Garner died on July 17, 2014.

108. Within days thereafter, the highly respected New York City Medical Examiner’s Office issued and publicized an autopsy report and the New York City Medical Examiner’s findings and conclusions respecting the death of Eric Garner.

109. The New York City Medical Examiner ruled Eric Garner’s death to be a *homicide*.

110. The New York City Medical Examiner’s Office reported that Eric Garner’s death was the result of “*compression of neck (choke hold), compression of chest and prone positioning during physical restraint by police*”.

111. The “physical restraint” commenced with the sustained application of the New York City Police Department banned choke hold by New York City Police Officer Daniel Pantaleo to and on the neck of Eric Garner; and it continued thereafter during which compression to the chest was applied by New York City Police Officers when Eric Garner had been brought to the ground (when the restraint was concluded and when Eric Garner was left alone without any interventions whatsoever by the then present New York City Police Officers to relieve Eric Garner of the life threatening distress to which he had been subjected).

112. Eric Garner’s death was the direct and proximate result of the intentional, reckless, and deliberately indifferent choices, actions, inaction, and conduct of the New York City Police Officers involved in the event including those who did nothing, among whom was a command Officer (Sergeant); and among whom, of course, was New York City Police Officer Pantaleo who intentionally, recklessly, and with deliberate indifference imposed and applied the sustained excessive force to Eric Garner by applying a choke hold to and

on the neck of Eric Garner over a period of time without which Eric Garner's breathing would not have been inhibited and impeded foreclosing Eric Garner from sustaining free and unencumbered breathing.

113. All of the actions and conduct and inactions which describe the cause of Eric Garner's death were the subject of the video and audio recording as was the inter-action between Eric Garner and the New York City Police Officers before, without justification, New York City Police Officer Daniel Pantaleo intentionally, reckless, and with deliberate indifference applied the choke hold to Eric Garner's neck.

114. The afore-described July 17, 2014 event/incident became public almost immediately and a matter of extraordinary press coverage (print, electronic, and otherwise).

115. Given the video and audio recording, which went "viral" so to speak, there was, as there should have been, a hue and cry for justice.

116. There was, as there should have been, a hue and cry that the criminal justice system be invoked to charge and prosecute, among others, New York City Police Officer Daniel Pantaleo.

117. That hue and cry became sustained and even louder, as it should have, when an autopsy was timely conducted by the New York City Medical Examiner and the report and findings and conclusions of the New York City Medical Examiner's Office were released.

118. The hue and cry was made still louder, as well, when New York City Police Commissioner William Bratton opined in public that it appeared to him that New York City Police Officers Pantaleo had applied a choke hold and that choke holds had long been banned by the New York City Police Department as a legitimate use of force by members of the New York City Police Department.

IV. RICHMOND COUNTY DISTRICT ATTORNEY DANIEL DONOVAN'S ACTIONS AND INACTIONS WHICH, IN THE CONTEXT OF THE FOREGOING, FORM THE PREDICATE FOR THE COMPLAINANT-GRIEVANT'S COMPLAINT-GRIEVANCE TO THIS COMMITTEE AND THE REQUEST THAT HE BE DISCIPLINED FOR THE DERELICTION OF HIS DUTIES AND FUNCTIONS AS THE PEOPLE'S PROSECUTOR

119. Almost immediately after Eric Garner's death became public and the video with audio recording went viral, Richmond County District Attorney Daniel Donovan's role, as "the People's" prosecutor, was implicated.

120. What do we know about Richmond County District Attorney Daniel Donovan?

121. Daniel Donovan is a fifty eight years of age.

122. Daniel Donovan is a lifelong resident of Staten Island.

123. Daniel Donovan was first elected to the position of Richmond County District Attorney in 2004.

124. Daniel Donovan has been re-elected on two separate occasions.

125. Daniel Donovan attended Fordham Law School.

126. Prior to being elected Richmond County District Attorney, Daniel Donovan served in various political positions, first as chief of staff to ex-Staten Island Borough President Guy Molinari; and, then, as Deputy Borough President under James Molinaro. Prior thereto, Daniel Donovan worked for approximately eight years as an attorney in the Office of the New York County District Attorney, Robert Morgenthau.

127. Given (*a*) the existence and publication of the video/audio recording, (*b*) given the existence and publication of the of the New York City Medical Examiner's autopsy report and findings and conclusions, (*c*) given the existence and publication of the fact that a choke hold was utilized by New York City Police Officer Daniel Pantaleo and was directly linked by the New York City Medical Examiner to the cause of the homicide death of Eric Garner, and (*d*) given that it had been publicized by New York City Police Commissioner William Bratton that long prior to the Eric Garner's July 17, 2014 death choke hold force to the neck of an individual had long been banned by the New York City Police Department as an authorized and permitted use of force by New York City Police Officers, *it was immediately apparent—or should have been immediately apparent- to Richmond County District Attorney Daniel Donovan, as a seasoned prosecutor who over the course of a long period of time had secured many homicide indictments against non police officers, that the conduct of New York City Police Officer Daniel Pantaleo and of all of the New York City Police Officer Officers then present was more likely than less likely some form of criminal conduct.*

128. That is, at the time that Richmond County District Attorney Daniel Donovan became aware of the the death of Eric Garner literally at and by the hands of New York City Police Officers, it was very clear to him that *there was probable cause* to obtain and to secure a homicide indictment from a grand jury against New York City Police Officer Daniel Pantaleo.

129. It was also very clear to Richmond County District Attorney Daniel Donovan that *there was probable cause* to obtain and to secure a homicide indictment from a grand jury against the other then present New York City Police Officers, including the command Officer (Sergeant), who failed to intervene and/or who exacerbated the situation by their own individual and collective actions and conduct and therefore participated in the conduct that caused the death of Eric Garner.

130. It was abundantly clear to Richmond County District Attorney Daniel Donovan (or it should have been) that Eric Garner’s death literally at the hands of New York City Police Officers was a “routine homicide” matter that justified securing a homicide indictment in a non-complicated presentation of a limited evidential narrative to a grand jury.

131. That is, of course, such should have been case (the event and the death of Eric Garner was a “routine homicide” matter in all respects) for Richmond County District Attorney Daniel Donovan but for the fact that the subjects of the probable cause based criminal conduct were New York City Police Officers.

132. That fact and that fact alone—the subjects’ status as New York City Police Officers, fundamentally changed the equation for Richmond County District Attorney Daniel Donovan.

133. Richmond County District Attorney knew that the status of the subjects as New York City Police Officers changed the equation for him –although it should not have mattered one iota for Richmond County District Attorney Daniel Donovan. But it did matter to him.

134. For a seasoned prosecutor who wanted to obtain a homicide indictment, Eric Garner’s unjustified death was an easy case to present to the grand jury and to obtain and secure a homicide indictment for the actions of those who caused Eric Garner’s death.

135. On the other hand, for the seasoned Richmond County District Attorney- attorney-prosecutor Daniel Donovan, the death of Eric Garner became much more complicated for him because the more likely than less likely criminal conduct was that of New York City Police Officers.

136. In that context and because Richmond County District Attorney Daniel Donovan elected not to do the right thing and disqualify himself from participating in the criminal justice system process because of personal and business conflicts of interest which he possessed and which compromised him in the performance of his duties and functions as “the people’s” attorney-prosecutor, Richmond County District Attorney Daniel Donovan was then compelled to engage in various actions and inaction to achieve *his* desired outcome of no criminal indictment for the death of Eric Garner.

137. This notwithstanding that the evidence clearly established that it was more likely than less likely that the conduct of New York City Police Officer Pantaleo as well as other then present New York City Police Officers was a crime (*there was clear probable cause to believe that the implicated New York City Police Officers’ conduct was a crime*).

138. But for the fact that the conduct under examination was that of New York City Police Officers, this case, at least at the probable cause stage and likely even thereafter at the trial stage where the standard that the prosecutor would be required to meet in order

to obtain a conviction against the New York City Police Officers was a much higher standard of guilt beyond a reasonable doubt than the minimal standard that he was required to meet at the grand jury stage, was, for the seasoned Richmond County District Attorney Daniel Donovan, very straight forward and simple and easy to present to the grand jury and to obtain an indictment *–if he had wanted to do so. But Richmond County District Attorney Daniel Donovan did not want to do so this notwithstanding any public protestations to the contrary on his part.*

139. Richmond County District Attorney Daniel Donovan looked at this case differently because the conduct that was more likely than less likely criminal was the conduct of New York City Police Officers.

140. Probable cause is the concept that the specific conduct being addressed and examined is more likely than less likely to be criminal conduct.

141. Because the probable cause standard is not a very high or difficult standard to meet, Richmond County District Attorney Daniel Donovan has obtained hundreds, perhaps thousands, of felony indictments over the years he has been Richmond County District Attorney against non police officer citizens and residents of Richmond County for many different felony crimes including many indictments for homicide.

142. Many of those felony indictments against non police officers were based on evidence which was very much less compelling than the evidence that was available to him with respect to the conduct of the New York City Police Officers and the death of Eric Garner which flowed directly from that conduct.

143. For how many alleged crimes have a video/audio recording of the conduct on which a probable cause predicate can be based and an autopsy report which described the conduct as a “homicide” and describes the basis for the conduct as that which is contained in the video/audio. Very few, if any, have that kind of evidence to base a felony indictment, particularly for a homicide crime.

144. One must remember, too, that the standard for the probable cause predicate (as described) is very much less than the standard which a prosecutor is required to meet in order to obtain a conviction of guilt beyond a reasonable doubt for the conduct which, at the probable cause stage, is simply being described and announced to be more likely than less likely a crime.

145. At the indictment stage an individual is just being charged with some form of accountability, where some form of minimal accountability for some particular conduct is more likely than not criminal. The minimal accountability in the form of an indictment is therefore appropriately subjected, thereafter, to very thorough scrutiny before the accountability can be maximized because a prosecutor has met a much higher burden of establishing beyond a reasonable doubt in the light of a public trial that there should be maximum accountability for the conduct which, theretofore, had simply met the standard of minimum accountability albeit and nonetheless very important accountability.

146. At the outset of this matter, Richmond County District Attorney Daniel Donovan looked at what he knew from the video/audio recording (what everyone knew who had seen the video/audio recording); he looked at what he knew from the New York City Medical Examiner's Garner autopsy report and findings and conclusions; he looked at what he otherwise knew from New York City Police Commissioner's public statement that the New York City Police Department had banned the use of choke holds by New York City Police Officers in the performance of their duties and functions ; and he looked at what he otherwise knew --- that Eric Garner had been stopped for the non criminal, petty offense of *allegedly* selling a "loose cigarette".

147. Knowing what he knew, Richmond County District Attorney Daniel Donovan should then have easily concluded, almost immediately, what was plainly clear to anyone: that it was more likely than less likely that the conduct at issue was criminal; and that, therefore and without a complicated presentation to the grand jury, the New York City Police Officers who caused Eric Garner's death by their various actions and inaction (individually and collectively) should, through an indictment, be charged with a crime—a homicide (connoting some minimal initial accountability for the death of Eric Garner).

148. How then should Richmond County District Attorney Daniel Donovan have achieved the requisite indictments against New York City Police Officer Daniel Pantaleo and other of the New York City Police Officers then present?

149. Richmond County District Attorney Daniel Donovan should have brought this matter before a grand jury and presented to the grand jury: (*a*) the video/audio recording; (*b*) the New York City Medical Examiner's report and findings and conclusions; (*c*) and the New York City Police Department's long standing ban against the use by New York City Police Officers of choke holds.

150. Richmond County District Attorney Daniel Donovan should then have instructed the grand jury on the appropriate law that he believed applied and urged and guided/navigated and propelled the grand jury to return indictments on those charges/crimes against New York City Police Officer Daniel Pantaleo and the other then present New York City Police Officers for their conduct that directly caused the death of Eric Garner (because the conduct was more likely than less likely criminal).

151. What Richmond County District Attorney Daniel Donovan should have done was that simple. It was not complicated. It was something he did hundreds of times when the conduct of New York City Police Officers was not at issue.

152. It was not complicated. No, it was more than simple –it was the classic "ham sandwich", because, unless your eyes are lying and unless "a picture is no longer worth a thousand words", there was and is no doubt that it was and is more likely than less likely that New York City Police Officer Pantaleo improperly applied a banned choke hold to and on the neck of Eric Garner and continued to apply such when and notwithstanding it

could be heard on the audio recording of the video material by all that Eric Garner was crying out numerous times—*eventually eleven times*, that he could not breathe.

153. Moreover and unless your eyes are lying there is no doubt that the New York City Medical Examiner’s report, findings concluded that Eric Garner died because of neck compression (a choke hold) and viewed the death of Eric Garner to be a homicide.

154. Further and unless your eyes are lying, there is no doubt that the choke hold applied to Eric Garner by New York City Police Officer had been banned long prior to the event involving Eric Garner as a legitimate use of force by New York City Police Officers.

155. Furthermore and unless your eyes are lying and unless your ears are plugged, there is no doubt that, while Eric Garner was being killed by the New York City Police Officers’ action and inaction, he was crying out *eleven times* that he could not breathe.

156. From the outset this was a simple case for establishing probable cause –whatever the outcome of a public criminal trial might be respecting the guilt beyond a reasonable doubt of any or all of the New York City Police Officers including New York City Police Officer Pantaleo.

157. So if Richmond County District Attorney Daniel Donovan had performed his duties and functions responsibly and consistent with the oath of his Office, the responsibilities and the obligations he had under the laws and Constitution of the United States and the State of New York to provide equal justice under the law to *all* victims of conduct which is more likely than less likely criminal in nature, Richmond County District Attorney Daniel Donovan would have secured a homicide indictment.

158. Perhaps it’s better illustrated this way when trying to show how and why Richmond County District Attorney Daniel Donovan compromised the integrity of the administration of the State’s criminal justice system and the grand jury process associated therewith in order to protect the New York City Police Officers involved in the matter; and, because of such, therefore should be the subject of this Complaint-Grievance and, eventually to action by this Committee for the breach of his professional responsibilities.

159. Richmond County District Attorney Daniel Donovan knowingly compromised the integrity of the administration of New York State’s criminal justice system process rather than to apply equal justice under the law in the criminal justice process because the subjects of the proposed criminal conduct were New York City Police Officers.

160. Eric Garner did nothing whatsoever to justify in any manner or fashion whatsoever that he should die literally at and by the hands of New York City Police Officers.

161. Whatever New York City Police Officer Daniel Pantaleo might say to anyone – including grand jurors, that his conduct was justified, there was no justification whatsoever—whatsoever, for New York City Police Officer Pantaleo to apply a New

York City Police Department banned choke hold to and on Eric Garner's neck and cause his death –without any intervention on the part of other than present New York City Police Officers, including a command Officer (Sergeant), taking steps to intervene and prevent such.

162. *In any other context and but for the protection of New York City Police Officers by Richmond County District Attorney Daniel Donovan because they are New York City Police Officers and for no other reason but that fact, Richmond County District Attorney Daniel Donovan would have proceeded, immediately, to a grand jury and secured a homicide indictment against a non police officer Daniel Pantaleo this notwithstanding that a non police officer Daniel Pantaleo came into the grand jury and provided a statement of justification.*

163. There can be little if any doubt that, *if a non police officer Daniel Pantaleo came into the grand jury and provided a self serving statement that the application of the choke hold was justified, Richmond County District Attorney Daniel Donovan would have vigorously cross examined a non police officer Daniel Pantaleo about his statements.*

164. Moreover Richmond County District Attorney Daniel Donovan would have conveyed to the grand jury in every manner and fashion available to him that *a non police officer Daniel Pantaleo's statement was unreliable, self serving, and otherwise and most importantly irrelevant to the grand jury's task at hand.*

165. Richmond County District Attorney Daniel Donovan would have made it absolutely clear to the grand jury (however he elected to make it clear) that, whether the conduct was justified as stated by *a non police officer Daniel Pantaleo* to the grand jury, such was a defense which should be left to a jury at a public trial and only after the grand jury did its work which was to return an indictment against a non police officer Daniel Pantaleo for homicide that provided some minimal accountability for what was clearly more likely than less likely criminal conduct which, eventually, should, after a public trial, achieve some form of maximum accountability).

166. However, Richmond County District Attorney Daniel Donovan did not do that which he would ordinarily do with respect to a non police officer Daniel Pantaleo solely because Daniel Pantaleo was not a non police officer but, rather, because he was, in fact, a New York City Police Officer.

167. If Richmond County District Attorney Daniel Donovan had conveyed the substance of the foregoing (however he conveyed it), it would have had the desired weight with and impact upon the grand jury; and the grand jury would have adopted such and returned an indictment against Daniel Pantaleo for his conduct.

168. But, Richmond County District Attorney Daniel Donovan did not want to convey that as described to the grand jury. Thus, he acted otherwise (as described).

169. Accordingly at this phase of the State's criminal justice process, Richmond County District Attorney Daniel Donovan totally failed to exercise his duties, responsibilities and authority to obtain the indictment when, it is believed, he failed to responsibly lead the grand jury to the conclusion that, (a) given the video/audio recording, (b) given the New York City Medical Examiner's autopsy report and conclusions and findings, and (c) given the New York City Police Department's ban of choke holds as a justified use of force, the conduct of New York City Police Officer Pantaleo and the other then present New York City Police Officers was more likely than not likely criminal and lead to the death of Eric Garner.

170. Richmond County District Attorney Daniel Donovan failed to lead the grand jury to that conclusion when he failed to convey to the grand jury that the asserted justification defense offered by New York City Police Officer Daniel Pantaleo to the grand jury was irrelevant to the grand jury's function to return the necessary indictment.

171. Therefore, he should have made clear to a grand jury—after vigorous cross examination which it is believed was totally lacking herein, that the Pantaleo statements to the grand jury should be disregarded and ignored because that defense should be left to a future jury to consider such and to weigh in that jury's function at a public trial in the full light of day on the charge that the grand jury, in the responsible exercise of its functions, should return in an indictment of New York City Police Officer Daniel Pantaleo and other then present New York City Police Officers. It's that simple.

172. Perhaps another example would best illustrate how Richmond County District Attorney Daniel Donovan compromised the integrity of the State's criminal justice process.

173. So, as an example to illustrate such, suppose police officers came on a scene—or suppose for that matter the seasoned Richmond County District Attorney Daniel Donovan himself came to a scene, and the officers and the District Attorney observed two individuals, one an African American male and one a white male, engaged in a verbal dispute. Neither of the two individuals were police officers.

174. In addition to the two individuals, the police officers and/or Richmond County District Attorney Daniel Donovan observed that the African American male, who was engaged in the argument with the white male, had several friends present and observing what was taking place.

175. The police officers and/or Richmond County District Attorney Daniel Donovan observe the African American individual, whose African American friends are standing around, take the white individual and grab him around the neck and apply a choke hold to and on the white male's neck; and the white male, who is being choked, is crying out that he cannot breathe.

176. Notwithstanding such, the African American male continued to apply the choke hold ultimately taking the white male, who is being choked, to the pavement where the

African American male and his African American friends pile on the white male and compress the white male's individual head to the ground. The white male dies.

177. All of the foregoing is memorialized in a contemporaneously recorded video/audio tape which goes viral. Moreover, the New York City Medical Examiner publishes a post incident autopsy report and findings and concludes that the white male was choked to death by compression of the neck (application of a choke hold) and compression to the chest as a consequence of being prone on the pavement; and that the New York City Medical Examiner views the death of the white male to be a homicide.

178. There can be absolutely no doubt that Richmond County District Attorney Daniel Donovan would have immediately gone to a sitting grand jury; he would have displayed to the grand jury the video/audio recording of the event; he would have displayed to the grand jury the New York City Medical Examiner's autopsy report, findings, and conclusions; and he would have provided the grand jury with instructions on the various forms of the crime of homicide including manslaughter and negligent homicide; and, finally, he would have conveyed to that grand jury, however he conveyed it, that he wanted the grand jury to return a homicide indictment.

179. The grand jury would have returned the indictment that Richmond County District Attorney Daniel Donovan wanted (as described in the foregoing example).

180. Moreover if upon advice of counsel the African American male appeared in the grand jury and offered a justification defense, there would be no doubt that Richmond County District Attorney Daniel Donovan would have cross examined him vigorously and/or otherwise would have conveyed to the the grand jury that the defense was better left to an open trial on the charge which he, as the prosecutor, wanted the grand jury to return in an indictment because the conduct, as described, was more likely than less likely criminal (this notwithstanding that the African American male offered a justification for the application of the choke hold to and on the neck of the white individual and which was better left to the public trial on the guilt of the African American male against whom Richmond County District Attorney Daniel Donovan was seeking a homicide indictment).

181. Moreover, Richmond County District Attorney Daniel Donovan would never have called the friends of the African American male whose actions and inactions were more likely than not criminal as well because they never intervened to prevent the actions of their friend and they otherwise participated in acts which caused the death by piling on the prone white individual, once that individual was on the ground, and compressed his chest, something which the Medical Examiner concluded was part of the cause of the death of the white individual.

182. Richmond County District Attorney Daniel Donovan would not have called the witness friends because they were not necessary to obtain the indictment against the African American who inflicted the death causing choke hold on the white male.

183. Richmond County District Attorney Daniel Donovan would not have called the African American male's friends as witnesses because, for him to call them as witnesses, when they could offer nothing relevant respecting an indictment of the African American male choker and could and would have only served to bolster a defense for the African American male, would have required Richmond County District Attorney Daniel Donovan to grant transactional immunity to those witnesses.

184. With the transactional immunity, such would have precluded Richmond County District Attorney Daniel Donovan him from bringing/securing an indictment against them for any of their more likely criminal than less likely criminal conduct related to the death of the white male.

185. Ultimately in the example/illustration as provided, Richmond County District Attorney Daniel Donovan would have obtained the homicide indictment that he as "the people's" attorney-public prosecutor was seeking because he was seeking the indictment; and because he wanted the indictment; and because the grand jury would simply be concluding that it was more likely than less likely that the conduct of the African American male (the choker)/or his African friends was more likely than less likely to be criminal conduct.

186. In the example as provided, Richmond County District Attorney Daniel Donovan would have obtained the indictments in a "New York minute"; and the entire grand jury process would have taken less than a day, if that.

187. What of course is missing in the example/illustration is the presence of police officer involvement in the conduct which is more likely than less likely criminal in nature. Of course, in the matter of the death of Eric Garner, it was the conduct of New York City Police Officers that was at issue.

188. Moreover, in the example, the race factors have been changed so that the persons involved in the offensive conduct, which is more likely than less likely criminal, were African Americans and the victim of the conduct was a white individual (rather than, as in the matter involving Eric Garner' death, where he, as the victim of the implicated conduct, is African American and the implicated conduct is that of white New York City Police Officers).

189. Why, then, didn't Richmond County District Attorney Daniel Donovan do in the death of Eric Garner that which is described in the example/illustration above where he would have secured an indictment from the grand jury in that proverbial "New York minute"?

190. Richmond County District Attorney Daniel Donovan did not do so because, notwithstanding the protestations by Richmond County District Attorney Daniel Donovan that he could be fair and he would present the "Eric Garner matter" to the grand jury fairly (he didn't tell the public he would change the approach that he ordinarily utilizes in his presentments to a grand jury), the reality is that *Richmond County District*

Attorney Daniel Donovan did not want to get a probable cause based homicide indictment against New York City Police Officer Daniel Pantaleo or any of the other then present New York City Police Officer for their conducts.

191. *It is believed that Richmond County District Attorney Daniel Donovan didn't want to obtain the indictment against them because, simply stated, they were New York City Police Officers who were engaged in conduct doing their duty "on the street", so to speak, and, because of that factor alone.*

192. It is believed that Richmond County District Attorney Daniel Donovan didn't want to get an indictment because they are police officers and, as such, they are part and parcel of his "prosecutorial family". They are, *de facto*, employees of his office.

193. So what should Richmond County District Attorney Daniel Donovan have done it immediately at the outset of his potential involvement in the matter?

194. Rather than compromise –prejudice if you will, the integrity of the administration of New York State's criminal justice process and specifically the grand jury phase of that process and achieve an outcome in the grand just process which was satisfactory to the police and to him as the prosecutor (his "prosecutorial family") but certainly not to *all* "the people" of the State of New York and specifically *all* of "the people" of Richmond County on whose behalf he functions and, per his oath, to whom his fiduciary and ethical obligations are owed, *he should, at the outset, have disqualified himself from this matter. He should have asked the Governor to appoint a special prosecutor.*

195. Because, as it is, Richmond County District Attorney Daniel Donovan, as do all local district attorneys wherever they be throughout the City of New York, the State of New York, or the nation as a whole, have inherent conflicts when, as a prosecutor ("the people's" attorney), they are seeking to obtain a probable cause based *true bill* of indictment against a local police officer or officers—in this case, New York City Police Officers, especially for a serious crime involving specifically and particularly the use of excessive force and resulting in the death of an unarmed, non threatening individual who was engaged with the officers about something which is not even a crime.

196. Of course, such is further complicated when the individual who is killed by the police officer's deadly force is unarmed and is a Black or Brown male; and the police officer or police officer(s), whose conduct is implicated, is/are white.

197. These factors just add more fire to the toxic and explosive mixture requiring the local prosecutor to be even more vigilant; and to always, always err on the side of his or her disqualification in addressing the matter through the criminal justice process.

198. Why then is it that a district attorney's office –any district attorney's office, has an inherent conflict in these situations and unlike, for example, when a police officer is accused, for example, of stealing money (something that is quite different than when a police officer is on duty and uses force, on the "street", so to speak, against an unarmed

individual who has allegedly engaged in what is, for all intent and purposes, no serious crime or offense) and therefore requires the prosecutor to disqualify himself or herself from addressing such in the criminal justice process?

199. The disqualification is required because each of the five separate District Attorney's Offices in the City of New York, including Richmond County District Attorney Daniel Donovan's Office on Staten Island, relies upon New York City Police Officers, in the collective sense, to do the *prosecutor's business*

200. *That business* is to prosecute the many thousands of matters for which each year the various prosecutors' Offices, including Richmond County District Attorney Daniel Donovan's Office, seek indictments; and/or prosecute matters which they otherwise bring in the criminal justice system and pursue to some resolution in the criminal justice system relying on those New York City Police Officers to do such.

201. Without the meaningful involvement of police officers in the process, district attorneys could not perform their *prosecutorial business*. It is that simple.

202. Therefore to prosecute a police officer for conduct engaged in by the police officer "on the street" when supposedly the police officer is pursuing law enforcement functions associated with the local prosecutor's business, would offend the members of the police family who are a fundamental part of the "prosecutorial family" and the prosecutor's business.

203. To bring an indictment against a New York City Police Officers would undermine the very effectiveness of the prosecutor's office-- the prosecutor's business, a business which is conducted on behalf of "the people".

204. Police officers are, if you will, intricate and critical players in the local prosecutor's "law enforcement family" and business operation.

205. A prosecutor can no more prosecute a police officer, because of conflict with the interest that the prosecutor has in executing and performing his business and the relationship of "police" to such, than the prosecutor could prosecute his or her cousin because of a family interests at odds with the prosecutor's business interests.

206. More appropriately, as an analysis of the conflict inherent in a local prosecutor seeking to indict a local police officer for conduct that the officer takes "on the street" in the performance of his duties and functions, suppose the subject of a potential criminal conduct was an actual employee of the prosecutor's office charged with looking into the conduct; or suppose the individual was, if not a directly paid employee of the prosecutor's office, an employee of an entity which worked everyday intricately and intimately with the prosecutor's office and as part of the prosecutor's business without which the prosecutor could not conduct his or her business.

207. It would be self evident to any prosecutor –any prosecutor, that, no matter how he or she felt that he or she could be fair, there would be an actual conflict in interest which would prevent him or her from performing his or her duties in administering the State’s criminal justice system (within in that conflict context).

208. To do so would inherently compromise and prejudice the integrity of the administration of any State’s criminal justice process, including the criminal justice system of the State of New York.

209. Certainly the confidence of *all* “the people”, on whose behalf the prosecutor functions and performs his business –or substantial portions of “the people” on whose behalf the prosecutor administers the State’s criminal justice system, would be jeopardized and compromised if not totally eviscerated.

210. Therefore, there would be no question that prosecutor would be *required to* disqualify himself/herself from engaging in the criminal justice process because of the conflict of interests (both personal and business in nature).

211. Among his or her duties, obligations and functions under the law for a prosecutor—any prosecutor, is for the prosecutor to take actions –and where appropriate inactions, that enhance and promote confidence of *all* people in the public at large—*all people* (Black, Brown, white, and other), in the integrity of the administration of the criminal justice system of which the prosecutor’s office is an intricate and fundamental part (along with the local law enforcement entity and the members of its force with which the prosecutor must have an effective, cooperative business relationship).

212. If the process is compromised from the beginning, then it is inevitable that the outcome will be compromised at the end.

213. There is an old adage that: “a bad beginning inevitably leads to a bad ending”.

214. The prosecutor can no more prosecute a police officer—again involving matters where an officer is charged with a criminal act such as assault or homicide (particularly when the individual who is the victim of the officer conduct is unarmed and death results from the officer’s conduct) without compromising his business relationship with the local police (part of the prosecutor’s “prosecutorial family”/“business family”), than he could prosecute a family member without compromising his family relationship with the member of the family.

215. The prosecutor can no more prosecute a police officer as described than he could prosecute an employee of his or her own office or an employee of entity with which his or her office works on a regular and close basis without compromising the prosecutor’s relationships in those contexts and by such compromise the business operation of the prosecutor’s office.

216. Even if the prosecutor could do so—something which it is submitted is for all intent purposes impossible since the prosecutor simply cannot compartmentalize himself or herself from his/her pre-conceived/pre-disposed bias in favor of the family member or in favor of his office’s employee or an employee of an entity which works regularly and intimately with the prosecutor’s office (his/or her generic “prosecutorial family”), a perception of conflict would nevertheless remain in the public at large or in significant portions of the public at large thereby undermining confidence by the public in the integrity of the administration of the State’s criminal justice system and process which the prosecutor’s office is sworn to up-hold and promote.

217. Either the “prosecutor’s family” (law enforcement officers) or the victim’s family would reject the fairness of the prosecutor’s efforts depending on the outcome and irrespective of the prosecutor’s abstract fairness or, potentially, his or her actual fairness, the latter of which is more theoretical than actual because prosecutors are human beings not automatons.

218. It is human nature for the prosecutor to want to believe police officers with whom the prosecutor works regularly and closely and/or an employee of his or her office and/or or one’s own family member with whom the prosecutor has more than a passing relationship.

219. Therefore, even if not consciously but sub-consciously, the prosecutor is going to be pre-disposed toward the very person whose conduct the prosecutor is assessing and for which he is seeking an indictment against the person toward whom he or she is pre-disposed. Again, it is just human nature.

220. That’s why there are conflicts of interests and why *all* “the people’s” attorney-public prosecutor must adhere very strictly to those principles and always –always, err on the side of disqualification *since the public trust is at stake*.

221. Such is *always* going to be the case when it is a police officer’s conduct that is the subject of scrutiny, particularly where the alleged conduct by the police officer has lead to the death of another individual; and, given the history of the subject of race in our nation, particularly where the death is of an unarmed Black or Brown male and where the encounter with the police arose out of a very minor, otherwise non violent incident and engagement with the police officer(s).

222. Because of Richmond County District Attorney Daniel Donovan’s self evident conflict, it was inevitable that, when he declined to disqualify himself and when he elected to continue to be involved in the matter involving the death of Eric Garner, no indictment would be returned against the police officer.

223 Such was so notwithstanding that the video/audio recorded evidence and the New York City Medical Examiner’s report findings, and conclusion and the decades old banned choke hold policy of the New York City Police Department and the multiple pleas by Eric Garner for what in essence was help because he could not breath cried out

that the conduct of New York City Police Officer Daniel Pantaleo was more likely than less likely criminal requiring an indictment; and that, in addition, the conduct of his fellow brother and sister New York City Police Officers then present was more likely than less likely criminal in nature requiring an indictment.

224. At the indictment stage an individual is just being charged with some minimal form of accountability if you will –where some form of minimal accountability for some particular conduct is more likely than not criminal and therefore the minimal form of accountability in the form of an indictment is appropriate.

225. That minimal level of accountability encompassed within the indictment would thereafter be subject to a very thorough scrutiny before it, as a minimal form of accountability, could become a maximum form of accountability if and when it is established by a prosecutor, beyond a reasonable doubt at a public trial in the full light of day and where the prosecutor's presentation is vigorously contested by the indicted individual's defense counsel, that there should be maximum accountability for the conduct.

226. Not insignificantly, the inherent conflict as described should have been particularly self evident for Richmond County District Attorney Daniel Donovan who ran for the office of District Attorney of Richmond County in the Borough of Staten Island, Richmond County where he knew and he knows that a significant number of its residents and voters are New York City Police Officers and/or their family members and/or close family friends and relatives (unlike situations in other of New York City's counties where there are, proportionately, far less resident-votes who are police officers).

227. In that regard, it is possible—perhaps even likely, that relations of New York City Police Officers—perhaps even relatives or friends of the subject New York City Police Officers, sat on the very grand jury which was being asked to return an indictment against the New York City Police Officers herein.

228. Because of his conflicts (both personal and business), Richmond County District Attorney Daniel Donovan did not, it is believed, undertake to assess how he should deal with the fact of the likely existing pro law enforcement bias inside of the grand jury room which made his abilities to present the case to the grand jury so much harder –especially if you are not confronting the personal and business conflicts of interests he possessed at the very outset (as apparently he did not because, if he had, he would have disqualified himself from participating in the matter of Eric Garner's death by and at the hands of New York City Police Officers).

229. For example, Richmond County District Attorney Daniel Donovan probably did not speak with and to ethics experts about how to confront what would be for him a very difficult presentation because of his situation (as described).

230. Richmond County District Attorney Daniel Donovan did not do so because, at the bottom line, it is believed that he did not want to pursue and secure an indictment against

the implicated New York City Police Officers and he knew that, by and how he presented the case to the grand jury and given the likelihood of who would (at least might) be sitting on the grand jury, such would drive the grand jury toward *his—his* desired outcome: no indictment against the New York City Police Officers this notwithstanding the compelling evidence which should have propelled a homicide indictment and in any other context would have propelled an indictment (at the urging of Richmond County District Attorney Daniel Donovan) .

231. It was natural that Richmond County District Attorney Daniel Donovan would not confront that problem (initially, his own conflict; and, subsequently when he did not disqualify himself, the composition of the grand jury) because, in addition to possessing a business interest that created conflict, he possessed a very personal interest, getting elected and re-elected to the Office of Richmond County District Attorney, that created conflict.

232. As set forth previously, it is believed that, unlike other counties in the City of New York, there are a disproportionately greater numbers of New York City police officers and their relatives and families who reside on Staten Island and vote for officials in Richmond County.

233. As a consequence and unlike other counties in New York City, such impacts Richmond County District Attorney Daniel Donovan personally (unlike District Attorneys in other City counties).

234. For those police officer and police officer related residents are the very voters that Richmond County District Attorney Daniel Donovan is required to court in order to get elected to the Office of Richmond County District Attorney and without which he could not have attained and could not continue to attain his election to the office of Richmond County District Attorney.

235. Richmond County District Attorney Daniel Donovan is not going to do anything which adversely affects his personal interest in their votes.

236. Moreover, Richmond County District Attorney Daniel Donovan's personal interest in courting the very powerful Patrolmen's Benevolent Association to obtain its support in his runs for office further highlights the conflict he has, personally, in prosecuting police officers (such is something that is common for any person who seeks to be elected and/or reelected to the position of district attorney).

237. Such naturally propels a district attorney to be more hesitant than less hesitant to seek and to obtain/secure an indictment against a New York City Police Officer, especially when it is being sought against a New York City Police Officer for conduct arising out of the performance of the Officer's functions in "fighting crime" on "the street".

238. By not confronting the very pro law enforcement bias in himself and the conflict associated therewith, such made it virtually impossible for him to present a case to the grand jury in a manner and fashion that would secure the indictment which was clearly justified on the evidential record at hand and a on a simple presentation of such to a grand jury.

239. In other words, there was a clear inherent conflict, on both business and personal levels, in Richmond County District Attorney Daniel Donovan undertaking to pursue an indictment against the New York City Police Officers.

240. Race factors, of course, only exacerbated the realities of the conflict since the mix of race and policing is an explosive mix which, if not addressed fairly and honestly, leads to explosive consequences.

241. The first step, of course, in addressing it fairly and honestly, is to acknowledge the conflict fairly and honestly. When that is not done –as was the case herein and as is the case usually –perhaps always (for anyone who is the prosecutor), the problem just gets worse.

242. However much a prosecutor never wants to admit that he or she cannot fairly present a case to the grand jury in these kinds of situations and however vigorously that prosecutor protests that he or she can in fact do so fairly and effectively, the reality is that he or she cannot do so fairly and effectively; and, if they attempt to do so, it is inevitably done in a way that compromises and undermines the very integrity of the administration and substance of the criminal justice system process at all of its various phases, but especially and particularly at the secret grand jury phase where a prosecutor undertakes to obtain an indictment against a police officer.

243. So with the situation that a prosecutor virtually never disqualifies himself or herself, the prosecutor then constructs an elaborate presentation to the grand jury which, in effect, deviates from the very simple approach ordinarily taken in a grand jury presentation where a police officer is not the subject of the proceeding.

244. The prosecutor does so, as it is believed Richmond County District Attorney Daniel Donovan did so in his presentation of the “Eric Garner death matter” to the grand jury, *so as not to obtain an indictment but, rather, to avoid obtaining the indictment under the guise that the prosecutor was acting fairly by presenting a smorgasbord of evidence (“all the evidence”) to the grand jury to consider everything and anything.* That is simply not the ordinary way in which a prosecutor presents an ordinary matter to a grand jury.

245. Accordingly and by applying the foregoing to the “Eric Garner death situation”, rather than presenting a very narrow amount of evidence to the grand jury –the video/audio recording, the New York City Medical Examiner’s autopsy report and findings and conclusions, and the decades old policy of the New York City Police Department banning choke holds as a proper and allowed use of force by members of the

New York City Police Department -- Richmond County District Attorney Daniel Donovan presented a smorgasbord of evidence, under the guise that he was being fair.

246. But, in reality, he was not being fair and he was in effect prejudicing and compromising the integrity of the administration of the State's criminal justice system to achieve his own end not to achieve the "people's" end to which he took an oath of office.

247. Richmond County District Attorney Daniel Donovan presented "all the evidence", under the guise of being fair but actually being unfair, rather than, as he would ordinarily do in a non police officer focused matter, presenting, under the guise of being fair, a very narrow evidential narrative that assured that a grand jury would return an indictment where the evidence, as was the situation in the "Eric Garner death matter", clearly established that conduct by the perpetrator(s) of the conduct was more likely than less likely criminal in nature.

248. In substance, Richmond County District Attorney Daniel Donovan just dropped every bit of extraneous evidence into the lap of a grand jury and did so over an extraordinarily long period of time; and he, in substance, said to the grand jury, do what you want rather than do as I say and as I want you to act (as he would have done in the ordinary non police officer focused matter).

249. The inevitable result, especially in the Richmond County venue (but ordinarily in any venue), involving a police officer would be that the grand jury would not return an indictment which, ultimately, it is believed is how Richmond County District Attorney Daniel Donovan wanted the grand jury to act but which he could not say. Therefore, he constructed a process, different than the process he would ordinarily utilize, to achieve that end; and he proposed that he did so in the name of fairness.

250. Under the disguise of "justice" and "fairness", it is believed that Richmond County District Attorney Daniel Donovan exploded the grand jury process which in any other context (as previously described) would have resulted in indictment because the evidence and legal presentation would have been narrowly constructed so as to assure that the indictment was returned because a homicide indictment was clearly --very clearly, indisputably, justified and the grand jury was made aware that the person who was most knowledgeable in this regard --Richmond County District Attorney Daniel Donovan, was convinced that an indictment should be returned because the New York City Police Officers' conduct was more likely than not likely criminal.

251. In effect, in this matter and contrary to his obligations under law and his oath of Office and his responsibilities as an attorney, it is believed that Richmond County District Attorney Daniel Donovan ---"punted"; and, in doing so, he compromised the integrity of the administration of the State's criminal justice system.

252. In effect, Richmond County District Attorney Daniel Donovan said, being fair and just is not to provide a clear and concise narrative and evidence presentation to the grand jury in a case where a little amount of very clear evidence clearly established that the

conduct of New York City Police Officer Daniel Pantaleo was clearly more likely than less likely criminal in nature (probable cause); and where a little amount of very clear evidence clearly established that the conduct of other New York City Police Officers then present was more likely than less likely criminal in nature.

253. Rather and because it is self evident that Richmond County District Attorney Daniel Donovan did not want an indictment, he did not disqualify himself as the prosecutor in this matter; and, then, he undertook, by the very nature of the presentation, to disregard the very presentation process which he would have ordinarily utilized; and Richmond County District Attorney Daniel Donovan achieved in the “Eric Garner death” matter the result which it is believed that he—Richmond County District Attorney Daniel Donovan, desired: no indictment of the New York City Police Officers.

254. The presentation by Richmond County District Attorney Daniel Donovan did not need and did not require production of twenty eight police officer and non police officer witnesses.

255. And, in the ordinary course -- where a police officer’s conduct was not the focus of the presentation and where manifestly clear evidence of a likely crime existed simply in the video and audio recording and in the New York City Medical Examiner’s report, findings, and conclusions—it is believed that twenty eight witnesses would not have been called.

256. The calling of the various New York City Police Officer witnesses that were present when New York City Police Officer Pantaleo applied the sustained choke hold to and on Eric Garner’s neck and then assisted Police Officer Daniel Pantaleo in taking Eric Garner to the ground was particularly problematic and offensive and with a self evident ulterior motive.

257. Such is so because the conduct was memorialized in a video/audio recording and needed no narrative from those several then present New York City Police Officers or, for that matter, anyone. The video/audio recording of the event was the absolutely best evidence. It told the story of the event and established that the conduct of New York City Police Officer Daniel Pantaleo in his use of the banned choke hold and the death of Eric Garner attributed to such was more likely than less likely criminal.

258. In fact, those very same New York City Police Officers witnesses actively failed to intervene when New York City Police Officer Daniel Pantaleo applied the choke hold to and on the neck of Eric Garner, this notwithstanding that Eric Garner was crying out, on eleven occasions, to *all* those present that he could not breathe.

259. Furthermore, those same witness New York City Police Officers actively engaged in applying some force to Eric Garner when Eric Garner was brought to the ground and when the Officers knew, as the choke hold was being applied to Eric Garner by Police Officer Pantaleo, that Eric Garner was in deep distress and unable to breathe and was, when on the pavement, saying he could not breathe.

260. In other words those several witness New York City Police Officers not provide anything of value to Richmond County District Attorney Daniel Donovan's presentation to the grand jury since the more likely criminal than less likely criminal conduct of the New York City Police Officers was all recorded on the video/audio document. However, by calling them as witnesses, Richmond County District Attorney Daniel Donovan effectively immunized those witness New York City Police Officers for their conduct related to the death of Eric Garner, conduct which, in and of itself, was more likely than less likely to be criminal in nature.

261. Richmond County District Attorney Daniel Donovan made it impossible for the grand jury to return an indictment against those very witness New York City Police Officers notwithstanding that their conduct, as recorded in the video/audio, was more likely than less likely criminal in nature.

262. Richmond County District Attorney Daniel Donovan knew or should have known that, when he called those New York City Police Officers as witnesses in the grand jury, he was giving those New York City Police Officers transactional immunity for their involvement in the death of Eric Garner; and, therefore, he knew that he was avoiding an indictment against them for any criminal culpability for their involvement in the death of Eric Garner, this notwithstanding that the actions of those New York City Police Officers were more likely than less likely criminal in nature (in addition to the conduct and actions of New York City Police Officer Pantaleo who did not receive transactional immunity when he voluntarily appeared before the grand jury).

263. All Richmond County District Attorney Daniel Donovan was doing in calling them as witnesses was endeavoring to present to the grand jury evidence to bolster the position that he actually held which is that no indictment should be returned against New York City Police Officer Pantaleo or against any of the other then present New York City Police Officer for the overall police officer conduct that lead to the death of Eric Garner including the new York City Police Officer witnesses' conduct.

264. Richmond County District Attorney Daniel Donovan's conduct as described was outrageous and a breach of the fundamental responsibility of a District Attorney to present in a clear and concise manner the evidence supporting an indictment in the case; not evidence designed to establish that the conduct was not criminal.

265. His motive becomes even clearer in the context of the evidence offered by New York City Police Officer Daniel Pantaleo himself when he chose to appear in front of the grand jury (with the advice of his attorney).

266. In that regard, it is highly unusual for defense attorney to counsel his client, whose conduct is the subject of the grand jury proceeding, to appear before the grand jury.

267. This is so since to appear before the grand jury provides a District Attorney with evidence, from the very mouth of the potential defendant in a criminal trial, that can be

used against the subject should that individual be indicted—as invariably the individual would be, and should that individual then elect to testify in a criminal trial that derives from the indictment.

268. Most importantly, the appearance by the subject who is a focus of the grand jury allows the District Attorney to vigorously cross examine the individual in the grand jury about his conduct and by such to make his case to the grand jury that the grand jury should return a criminal indictment.

269. For District Attorney Daniel Donovan not to effectively cross examine New York City Police Officer Daniel Pantaleo (if cross examine him at all) and to provide New York City Police Officer Pantaleo a forum—in secret, to offer an unencumbered defense of his conduct is highly unusual if not extraordinary. It is certainly not the ordinary approach by a district attorney who is seeking to obtain a homicide indictment for conduct which is self evidently more likely than less likely criminal

270. The failure by Richmond County District Attorney Daniel Donovan to subject New York City Police Officer Daniel Pantaleo to a vigorous cross examination (as it is believed was the case herein) and the failure by Richmond County District Attorney Daniel Donovan to not make the case to the grand jury that New York City Police Officer Pantaleo's statement was self serving and irrelevant to the grand jury's consideration of the evidence about Daniel Pantaleo's conduct were, it is believed, clearly designed to provide the grand jury with the opportunity to decline to indict New York City Police Officer Daniel Pantaleo, something which, it is believed, was clearly the non stated goal of Richmond County District Attorney Daniel Donovan.

271. The failure to challenge New York City Police Officer Daniel Pantaleo's statement to the grand jury was a significant breach of the District Attorney's duties and obligations and reflect really what, at least in the context of this case, Richmond County District Attorney Daniel Donovan's mission was in using the grand jury as he did: to provide cover for him when he failed to secure the indictment which, in any other circumstance not involving a police officer, he would have obtained.

272. It reflected that Richmond County District Attorney Daniel Donovan was not serious about obtaining an indictment against New York City Police Officer Daniel Pantaleo since cross examination is the vehicle by which Richmond County District Attorney Daniel Donovan would highlight to any jury, including at this phase the grand jury, the lack of credibility to the defense being offered by New York City Police Officer Daniel Pantaleo to the grand jury and/or stated positions that are being offered through the testimonies of the other witness before the grand jury.

273. The failure to cross examine the subject police officer was particularly offensive where Richmond County District Attorney Daniel Donovan elected to call the other than present New York City Police Officers to the event whose testimonies were unnecessary and served, it is believed, only to bolster the statements of New York City Police Officer Daniel Pantaleo whose conduct was a primary focus of the grand jury (as it is apparently

the only focus –otherwise he would not have immunized, as it is believed he did, the other than present New York City Police Officers whose conduct was implicated)

274. Not insignificantly, when those non necessary witness New York City Police Officers were called as witnesses by Richmond County District Attorney Daniel Donovan, those New York City Police Officers received transactional immunity for their conduct which contributed to the death of Eric Garner.

275. Since they were not needed as witnesses and since they served to only bolster the statements of New York City Police Officer Pantaleo, it is more than troubling that those Officers were called and, therefore, immunized for any criminal culpability that they had for their own conduct in the death of Eric Garner –conduct which, on its face, appears to be more likely than less likely criminal in nature.

276. It is believed that, when Police Officer Daniel Pantaleo appeared before the grand jury and offered his statements to the grand jury, Richmond County District Attorney Daniel Donovan did not engage in any meaningful cross examination thereby in effect giving New York City Police Officer Daniel Pantaleo an improper *de facto* transactional immunity because Richmond County District Attorney Daniel Donovan was giving his imprimatur to the accounting offered by New York City Police Officer Pantaleo in his defense before the grand jury.

277. In other words, New York City Police Officer Pantaleo was allowed to testify and to give his defense in the secret jury, without cross examination. He got a free pass, in secret, and he avoided having to testify on his own behalf and to give his defense in an open courtroom subject to public scrutiny and vigorous cross examination, at that point, by the District Attorney.

278. In addition to all of the foregoing, it is believed that Richmond County District Attorney Daniel Donovan did not, as he would ordinarily have done, provide the charges to the grand jury in a manner and fashion which, in substance and effect, told and directed the grand jury to return an indictment and on what charges to return the indictment.

279. It is believed that Richmond County District Attorney Daniel Donovan simply provided the charges to the grand jury that were available to them and, in sum and substance and in effect, told the grand jury to do what it wanted to do, something which a responsible prosecutor would never do in a case where the conduct being looked at was not the conduct of a police officer.

280. It is believed, too, that Richmond County District Attorney Daniel Donovan provided the grand jury with the law on justifiable homicide, something which is not likely that he would do in the ordinary cases involving homicide because, to do so, gives the grand jury the out not to indict when that decision, as to the viability of the defense, is irrelevant to the grand jury's function and should be left to a trial jury's efforts in the public trial of the indicted police officer.

281. Such is because the justifiable homicide defense is left to be addressed by a jury at a trial of the case after the indictment has been returned and the case is fully aired in a public court where the prosecutor is undertaking to prove his case against the police officer beyond a reasonable doubt and is vigorously undertaking efforts to undercut, not promote, the justifiable homicide defense (and where the defendant police officer's attorney is vigorously endeavoring to establish that defense in order to obtain an acquittal from the trial jury because the prosecutor has been effectively challenged in meeting his burden to establish guilt of the homicide crime beyond a reasonable doubt).

282. In effect it is believed that Richmond County District Attorney Daniel Donovan transformed himself in the "Eric Garner death" matter from "the People's" attorney-prosecutor in the grand jury proceeding, with clear duties and obligations as the "People's attorney" to present evidence of the more likely than less likely criminal nature of the conduct of New York City Police Officer Daniel Pantaleo and other then present New York City Police Officers including a command Officer (Sergeant), into the defense attorney for New York City Police Officer Daniel Pantaleo and the other appearing witness New York City Police Officers.

283. In effect, Richmond County District Attorney Daniel Donovan turned the secret grand jury proceeding on its head into a secret trial jury proceeding. Richmond County District Attorney Daniel Donovan transformed the purpose of the secret grand jury proceeding, where it was the attorney-prosecutor's function to simply establish that the conduct of New York City Police Officer Daniel Pantaleo and the other then present New York City Police Officers was more likely than less likely criminal in nature, into a secret trial process where he changed his mission as "the People's" attorney-prosecutor to establish that the New York City Police Officers' conduct was more likely than less likely criminal into the *de facto* mission of a defense attorney who was engaged in representing the individual whose conduct was the subject of the grand jury proceeding.

284. Ultimately, Richmond County District Attorney Daniel Donovan changed his role and his functions under law and to which he took an oath of Office for and on behalf of "the People" from "the people's" attorney-prosecutor into a defense attorney's role on behalf of the individuals whose conduct was the very subject of the grand jury proceedings.

285. Richmond County District Attorney Daniel Donovan breached his duties and functions and obligations under law and under the oath he took to be "the People's attorney in the criminal justice process and not a defense attorney for anyone, including a police officer.

286. Richmond County District Attorney Daniel Donovan changed his role from prosecutor to defense attorney and breached his duties, obligations, and responsibilities under law and to which he took an oath, because, it is believed, Richmond County District Attorney Daniel Donovan never wanted a criminal indictment to be returned against New York City Police Officer Daniel Pantaleo or any other New York City Police

Officer who was at the scene of Eric Garner’s death and whose conduct, individually and collectively, was more likely than less likely criminal in nature.

287. Accordingly and unlike the ordinary homicide case brought to a Richmond County grand jury that did not involve the conduct of New York City Police Officers and where on the same evidence a homicide indictment would have been obtained, no indictment was returned against New York City Police Officer Daniel Pantaleo or any other New York City Police Officer notwithstanding that, at this preliminary stage, the evidence clearly established that there was probable cause to believe New York City Police Officer Pantaleo and other then present New York City Police Officers engaged in criminal conduct that caused the death of Eric Garner (that is that the clear evidence established at this stage that it was more likely than less likely that their conduct was criminal and not justified).

288. Once Richmond County District Attorney Daniel Donovan elected not to disqualify himself as the prosecutor in lieu of a special prosecutor, Richmond County District Attorney Daniel Donovan had no other course of action, given what is believed to be his predisposition not to get an indictment (while proposing that he could be fair and would go where the evidence lead him so to speak), than to compromise his functions and duties and obligations to “the People” of the State of New York, of which the people of Richmond County are a part, and, in a larger context, to the people of the nation as a whole.

289. Richmond County District Attorney Daniel Donovan undermined the very integrity of the criminal justice system processes to which he owed his allegiance.

V. THE APPLICABLE RULES OF PROFESSIONAL CONDUCT WHICH WERE VIOLATED BY RICHMOND COUNTY DISTRICT ATTORNEY DANIEL DONOVAN

290. The Rules of Professional Conduct, dated May 1, 2013, were promulgated as Joint Rules of the Appellate Divisions of the Supreme Court, effective April 1, 2009. They supersede the former part 1200 (Disciplinary Rules of the Code of Professional Responsibility).

291. Under Rule 1.7 of the Rules of Professional Conduct it states:

“Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if a reasonable lawyer would conclude that either:

- (1) the representation will involve the lawyer in representing differing interests; or
- (2) there is a significant risk that the lawyer’s professional

judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests."

292. Richmond County District Attorney Daniel Donovan is the attorney-prosecutor for "the people" of the State of New York; and, within that universe, specifically and particularly *all* of "the people" of Richmond County (Staten Island, New York).

293. The "reasonable lawyer" standard for assessing a reasonable lawyer's conclusion, whether a conflict of interest exists under the Rules, is an "objective" standard, not a "subjective" standard.

294. In other words, the question is whether a reasonable lawyer would "objectively" conclude, not whether the reasonable lawyer would "subjectively" conclude, that he/she possessed a conflict of interest in the representation of the client.

295. The reason for the "objective standard" rather than the "subjective standard" is because the subjective standard is inherently self serving.

296. Under a subjective standard, the "reasonable attorney" will always believe that he/she is both a "reasonable attorney" and that there is no conflict of interest; and that he or she can carry out his or her function with integrity and without compromising the integrity of the administration of the civil and criminal justice systems.

297. Respecting the application of this Rule under the objective standard and based on the allegations, assertions, and averments previously set forth herein, it was *objectively unreasonable* for Richmond County District Attorney Daniel Donovan to conclude, as a reasonable attorney functioning in his role as attorney-prosecutor on behalf of his client—*all* "the people" of the State of New York and more specifically all "the people" of Richmond County on Staten Island, that his presentation of evidence to the grand jury regarding Eric Garner's death matter did not put him in the position of "representing "different interests" because it did place him in such a position; and, further, that it was *objectively unreasonable* for him to conclude that there was not a "significant risk that his professional judgment on behalf of a client ["the people"] [would] be adversely affected by the [his] [the individual attorney who is functioning as a prosecutor] own business, property or other personal interest" because there was just such a "significant risk".

298. As previously set forth and described more fully herein, Richmond County District Attorney Daniel Donovan was in a situation where he was, in substance and effect, representing different interests: "the people's" interest on whose behalf he functions; and the police officer's interests as part of his "prosecutorial family".

299. Furthermore and as previously set forth and described more fully herein, there is no doubt that there was a "significant risk"—eventually realized, that Richmond County District Attorney Daniel Donovan's "professional judgment" on behalf of "the People" was compromised and that it "adversely affected" his business interests.

300. His business interest was maintaining a functioning and effective business relationship with officers in the New York City Police Department without whom Richmond County District Attorney Daniel Donovan could not operate his business-his prosecutor's office. New York City Police Officers are a fundamental part of his "prosecutorial family".

301. Because of Richmond County District Attorney Daniel Donovan's primary interests in running his business, his professional judgment was necessarily comprised when he went outside of the regular and ordinary professional judgment he would exercise and regularly apply in the presentation of evidence to a grand jury where a police officer's conduct was not at issue.

302. Rather than making a very simple and brief and concise presentation to the grand jury (as the evidence justified), Richmond County District Attorney Daniel Donovan made a very complex, confusing and extended presentation to the grand jury when such was absolutely not necessary and, in fact, was counter-productive to the goal of securing an indictment.

303. Ordinarily, Richmond County District Attorney Daniel Donovan would exercise his professional judgment and present a concise evidential narrative to a grand jury to establish before that grand jury that the individual's conduct was more likely than less likely criminal conduct; and he would obtain an indictment as he would.

304. Richmond County District Attorney Daniel Donovan totally abdicated that professional judgment and responsibility in presenting the evidential and legal narrative the Richmond County grand jury as he did regarding Eric Garner's death.

305. Richmond County District Attorney Daniel Donovan abdicated his responsibility and went outside of his ordinary grand jury approach in what is otherwise a simple homicide case solely because Daniel Pantaleo was a New York City Police Officer.

306. The inevitable result from the compromising of his professional responsibility and his professional judgment was that, unlike the non police officer case where Richmond County District Attorney Daniel Donovan would have secured a homicide indictment, he failed to obtain such an indictment against New York City Police Officer Daniel Pantaleo; and, by the way, failed to obtain an indictment against other New York City Police Officers then present and to whom Richmond County District Attorney gave transactional immunity for their non necessary testimonies in front of the grand jury notwithstanding that their conduct was more likely than less likely criminal in nature.

307. Moreover, his professional judgment and responsibility was compromised, because Richmond County District Attorney Daniel Donovan had a personal interest at stake independent of the business interest he had at state.

308. That personal interest was –as previously set forth and more specifically described herein, the votes of Staten Island residing police officers, their families, and the police officers’ Staten Island residing relatives and friends, all of which Richmond County District Attorney Daniel Donovan courted and needed to get elected to his position as Richmond County District Attorney; and, inter-related thereto, the support and resources of the Patrolmen’s Benevolent Association (the subject New York Police Officers’ union) which Richmond County District Attorney Daniel Donovan courted and needed to get elected to the Office of Richmond County District Attorney.

309. Under Rule 8.4.

“Misconduct

A lawyer or law firm shall not:

(d) engage in conduct that is prejudicial to the administration of justice...”

310. Richmond County District Attorney Daniel Donovan engaged in conduct (as previously set forth and described in all respects) that was and continues to remain prejudicial to the administration of justice.

311. In fact, the conduct in which Richmond County District Attorney Donovan engaged (as previously set forth and described in all respects) has undermined the very integrity of the administration of justice in a manner and fashion which is unlikely to be undone unless this Committee takes action to address and redress such as at least a step in the process of healing and the remedying of the injustice that has resulted from his conduct.

312. This Committee’s action will also act as a deterrent to Richmond County District Attorney Daniel Donovan and all other district attorneys throughout the State of New York when in the future a matter, comparable to the death of Eric Garner and involving law enforcement officers, arise (as inevitably will be the case as sad and as unfortunate as it is to have to declare that likely reality).

VI. THE CONSTITUTIONAL PROVISIONS WHICH WERE
VIOLATED BY RICHMOND COUNTY DISTRICT ATTORNEY
DANIEL DONOVAN

313. Richmond County District Attorney Daniel Donovan violated the provisions encompassed within the Thirteenth and Fourteenth Amendments to the United States Constitution and the Civil Rights Act of 1866, 42 U.S.C. Section 1981, and the Civil Rights Act of 1871, 42 U.S.C. Section 1983.

314. The Fourteenth Amendment to the United States Constitution guarantees that *all* citizens are entitled to due process of law and, as well, to equal protection of the law.

315. Eric Garner (in death), his surviving family members, and the Staten Island NAACP Branch Complainant-Grievant and *all* of those on whose behalf it advocates, each had an objective expectation that the criminal justice system would provide Eric Garner and his surviving family members and all Black and Brown and other people of color fair and impartial due process with respect to addressing the death of Eric Garner, an African American, that was caused by the conduct of white New York City Police Officers.

316. Each of them had an objective expectation that the New York State criminal justice system and the Richmond County criminal justice system would provide them fair and impartial due process with respect to addressing the death of Eric Garner.

317. That objective expectation constitutes a “property interest” under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

318. The actions and conduct of Richmond County District Attorney Daniel Donovan, in administering both the New York State criminal justice system and the Richmond County criminal justice system violated the rights of the aggrieved individuals, including the Complainant-Grievant Staten Island NAACP Branch and *all* of those on whose behalf it advocates, to due process of law as guaranteed under the Due Process Clause of the Fourteenth Amendment to the United States Constitution in conjunction with the Civil Rights Act of 1871, 42 U.S.C. Section 1983.

319. Richmond County District Attorney Daniel Donovan’s actions and conduct also violated the rights of Eric Garner (in death) and his surviving family members and the Staten Island NAACP Branch (and *all* of those on whose behalf it advocates) to equal application of the law and equal protection under the law free of any racial discriminatory aspects to such as guaranteed under the Fourteenth Amendment to the United States Constitution.

320. The late J. Skelly Wright, then a distinguished jurist on the United States Court of Appeals for the District of Columbia Circuit,* once wrote, in a case that involved a claim of racial discrimination, that “the arbitrary quality of thoughtless can be as perverse as a willful scheme”.

321. Intent, Judge Wright wrote in substance, simply “intensified the stigma” attached to the conduct. Intent, he wrote, is not, however, the determinative factor in assessing whether the challenged conduct violated the Equal Protection Clause of the Fourteenth Amendment to the United States.

322. For, as Judge Wright wrote in substance, the effect of the racially discriminatory conduct on the victim, whether intentionally inflicted conduct or arbitrarily inflicted conduct, remains the same: a violation of the law that has injured the victim in some core and fundamental respect and, beyond such, injures each and every one of us in the nation, whether white, Black, Brown, or other, because it perpetuates the condition of racism that still exists in the fabric of the country.

323. The choices and the decisions, actions and conduct of Richmond County District Attorney Daniel Donovan based thereon (whether they be described as arbitrary or intentional or reckless and deliberately indifferent) were, in the context of addressing Eric Garner’s death and the conduct of the New York City Police Officers that caused Eric Garner’s death and in applying and implementing the administration of the New York State criminal justice system and the Richmond County criminal justice system associated therewith, racially discriminatory and injurious to the African American victim of the conduct of the white New York City Police Officers and, beyond such, to each and every one of us in the nation, whether white, Black, Brown, or other.

*Judge Skelly Wright was a citizen and resident of the City of New Orleans. Before assuming his position on the federal appellate court in Washington, D.C., he sat as a federal District Court Judge in New Orleans. He was part of the elite in New Orleans. Judge Wright ordered that the New Orleans public schools be desegregated causing enormous conflict and up-roar. As a result, he was driven out of his beloved New Orleans.

Judge J. Skelly Wright is remembered as the principled and courageous human being that he was in performing his duties and functions as a federal district court judge in a manner and fashion which promoted the integrity of the administration of this nation’s justice system. He carried favor with no one and, in fact, suffered the condemnation of his friends as a consequence of the principled choices and decisions he made and the actions he took based on such. We can all learn from his example.

324. As such Richmond County District Attorney Daniel Donovan violated the rights of Eric Garner (in death), Eric Garner's surviving family members, and the Staten Island NAACP Branch (and *all* of the individuals on whose behalf the Staten Island NAACP Branch advocates) to Equal Protection under the law free of racial discrimination as guaranteed to each of them pursuant to and under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. Section 1983.

325. The Thirteenth Amendment to the United States Constitution was enacted by this nation after the Civil War to eradicate the institution of slavery and, over time, all of the vestiges of that institution.

326. The vestiges of that institution continue to exist in our nation's fabric and seem unwilling to die --vestiges of the institution of slavery unwilling to die.*

327. Among those vestiges unwilling to die is the refusal to accord to the Black and Brown victims of more likely than less likely criminal conduct by white law enforcement officers due justice otherwise known as equal benefits under the law that would otherwise be accorded to a white individual in similar situations (for example the white victim of more likely than less likely criminal conduct by a Black individual).

328. Richmond County District Attorney Daniel Donovan's choices and the actions, decisions, and conduct based thereon in addressing the death of Eric Garner, an African American (which death was caused by the conduct of white New York City Police Officers that was more likely than less likely criminal) and in applying and implementing of the administration of the criminal justice systems of the State of New York and of Richmond County associated therewith, violated the guarantees encompassed in the Thirteenth Amendment to the United States Constitution and the Civil Rights Act of 1866, 42 U.S.C. Section 1981.

VII. RELIEF

329. The Grievance Committee should assume jurisdiction of this matter.

*The late Supreme Court Justice William O. Douglas wrote, in substance in a case involving a claim of racial discrimination in the area of housing and the application of the post Civil War Thirteenth Amendment and Civil Rights Act associated therewith, that the tragedy of the institution of slavery was not what that institution did to Black Americans, but what that institution has done to the hearts and minds of white individuals. See: Jones v. Mayer, 392 U.S. 409 (1968), Douglas, J., concurring.

328. The Grievance Committee should undertake a full and serious investigation of the allegations heretofore set forth and the actions and inaction of Richmond County District Attorney Daniel Donovan in the "Garner matter" from his refusal to disqualify himself in lieu of a special prosecutor appointed by the Governor to its conclusion when the grand

jury declined to return an indictment; and all aspects of Richmond County District Attorney Daniel Donovan's conduct in between the starting point and the ending point.

330. The Grievance Committee should issue a full and complete report about what happened in this matter and the responsibilities of Richmond County District Attorney Daniel Donovan for such including whatever breaches of his duties and responsibilities and obligations as the prosecutor occurred in this matter.

331. The Grievance Committee should impose whatever discipline is needed and required to redress the actions and conduct of Richmond County District Attorney Daniel Donovan including, if appropriate, any recommendation of removal from his Office.

332. The Grievance Committee should issue recommendations respecting the larger more all encompassing issues of how the Offices of District Attorneys within the Counties of New York, over which this Committee has jurisdiction, should handle matters involving the death of an unarmed citizen by the conduct of New York City Police Officers whether the conduct and death involves the discharge of a New York City Officers' gun or whether it involves some other form of the use of force by New York City Police Officers.

333. The Grievance Committee should issue a recommendation to the Governor and/or take whatever other actions the Grievance Committee deems appropriate encompassing the proposition that the Governor of the State of New York should submit a bill to the New York State legislature, or that the Governor take whatever other action is available to him as Governor, to establish a New York State-wide Office of Special Counsel for the Oversight of Local Prosecutors throughout the State.

334. The Grievance Committee should issue a recommendation to the Governor and/or take whatever other actions the Grievance Committee deems appropriate encompassing the proposition that the Governor of the State of New York submit a bill to the New York State legislature that would require the grand jury proceedings be released to the public should a grand jury decide not to return an indictment against any law enforcement officer for law enforcement conduct which it is addressing.

335. The Grievance Committee should take such other and further actions as it deems appropriate and in the interest of justice; in the interest of the Garner family; in the interest of the residents and citizens of the County of Richmond; in the interest of the residents and citizens of the entire City of New York and particularly the Counties within the City of New York over which this Committee has jurisdiction; in the interests of the people throughout the State of New York; and in the interests of all people throughout our nation.

DATED: New York, New York
December 17, 2014

Respectfully submitted,

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STATEN ISLAND BRANCH OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE
BY: _____

AFTER-THOUGHTS

“The purpose of politics is to establish justice in a sinful world.”

Christian Realism by Reinhold Niebuhr

John Rawls, in his book *A Theory of Justice*, offers that, in common language parlance, “justice” equates to “fairness”.

If the purpose of Richmond County District Attorney Daniel Donovan was to establish “justice” --that is “fairness”-- in an otherwise “sinful world” for what was the more likely than less likely criminal conduct of New York City Police Officer Daniel Pantaleo and other New York City Police Officers then present when Eric Garner was killed because of their individual and collective actions and inaction, Richmond County District Attorney Daniel Donovan failed miserably.

Richmond County District Attorney Daniel Donovan miserably failed to do so because of the intentional, reckless, and deliberate indifferent choices that he made and the actions that he took all of which, individually and certainly collectively, compromised the integrity of the administration of the criminal justice system, of which he was an intricate part (acting, as an attorney, for and on behalf of “the people” of the State of New York and of Richmond County).

Richmond County District Attorney Daniel Donovan failed miserably in carrying out his duties and functions recklessly and with deliberate indifference to the Oath of his Office, to the Rules which govern his conduct as an attorney, and to the laws and Constitution of the State of New York and of the United States from the outset of his involvement immediately after the death of Eric Garner occurred on July 17, 2014 and concluding with the grand jury’s December 3, 2014 decision—ultimately Richmond County District Attorney Daniel Donovan’s decision (as it ultimately was his decision)-- not to indict New York City Police Officer Daniel Pantaleo and other of the then present New York City Police Officers for their more likely than less likely criminal conduct that caused the death of Eric Garner.

TO:

STATE OF NEW YORK GRIEVANCE COMMITTEE FOR THE
SECOND, ELEVENTH & THIRTEENTH DISTRICTS

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DANIEL M. DONOVAN, JR.
Richmond County District Attorney
25 Central Avenue
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VERIFICATION

James I. Meyerson, being duly admitted to practice law in and before the Courts of the State of New York among other courts and being duly aware of the penalties for perjury, affirms under penalty of law:

1. Along with Laura D. Blackburne, I am the attorney for the Complainant-Grievant.
2. I have been admitted to practice law in and before the Courts of the State of New York, among others, since February, 1971.
3. I have prepared the foregoing Complaint-Grievance.
4. The allegations and averments contained therein is based on information and belief which I have obtained in the course of undertaking to put the Complaint-Grievance together; and which I have otherwise obtained during the course of my professional career.
5. The Complaint-Grievance is offered in good faith and with the belief that the State of New York Grievance Committee for the Second, Eleventh & Thirteenth Judicial Districts has jurisdiction over the Complaint-Grievance.
6. Further, the Complaint-Grievance is offered in good faith and with the belief that , upon consideration of such, the New York State Grievance Committee for the Second, Eleventh, & Thirteenth Judicial Districts has the power to issue appropriate relief as described including the power to discipline Richmond County District Attorney Daniel Donovan for the breach of his duties, responsibilities, and obligations under the laws and Constitutions of the State of New York and of the United States, under the Oath of the Office to which he subscribed when he was sworn in as Richmond County District Attorney, and under the Rules of Professional Responsibility which govern the performance of his duties as an attorney duly admitted to practice law in and before the Courts of the State of New York.

DATED: New York, New York
December 17, 2014

Respectfully submitted,

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