

**Statement by**  
**Richmond County District Attorney**  
**Daniel M. Donovan, Jr., Regarding the No True Bill in**  
***The Matter of the Investigation into the Death of Eric Garner***

I first want to express my condolences to Eric Garner's family for their loss, and to acknowledge the heartache of his mother, his wife, his children, as well as his other family members, loved ones, and friends, who have consistently carried themselves with grace during the past four months.

A Richmond County grand jury has completed its investigation into the tragic death of Eric Garner on July 17, 2014, after being taken into police custody for an alleged sale of untaxed cigarettes in the Tompkinsville area of Staten Island, New York. After deliberation on the evidence presented in this matter, the grand jury found that there was no reasonable cause to vote an indictment.

Upon Eric Garner's death, investigations were immediately commenced, and independently conducted, by the Office of the New York City Chief Medical Examiner, the Internal Affairs Bureau of the New York Police Department, and the Richmond County District Attorney's Office.

Although the Internal Affairs Bureau had immediately responded to the scene and conducted its own investigation, I directed all of the Detective Investigators of my Office, along with other investigative personnel, all of whom who do not work for the New York Police Department, to initiate an independent investigation, in cooperation with eight Assistant District Attorneys of my Office assigned to the case.

That investigation spanned four months, and focused on locating civilian eyewitnesses with information and evidence to offer, speaking to those who provided medical treatment, whether on the scene or at the hospital, and consulting expert witnesses in the area of forensic pathology, policies, procedures, and training of police officers, as well as emergency medical technicians. Over 38 interviews were conducted, yielding 22 civilian witnesses who reported to have seen some part of the interaction between Eric Garner and members of the NYPD.

On August 19, 2014, I announced that evidence regarding the circumstances of Eric Garner's death would be presented to a Richmond County Grand Jury. At that time, I assured the public that I was committed to a fair, thorough, and responsible investigation into Mr. Garner's death, and that I would go wherever the evidence took me, without fear or favor.

Clearly, this matter was of special concern in that an unarmed citizen of our County had died in police custody. For that reason, a dedicated grand jury was empanelled exclusively to hear this case, committed to serving in that capacity for the months the investigation would entail. All 23 members of this community who comprised the Grand Jury in this matter dutifully fulfilled that commitment by attending each and every one of the sessions that began on September 29, 2014, and concluded on December 3, 2014. I would like to thank them for their time, effort, and commitment to this investigation, and for the careful manner in which they discharged their solemn duty as grand jurors.

As this grand jury was dedicated to hearing only evidence regarding the circumstances surrounding Eric Garner's death, it was afforded the opportunity to singularly focus on the evidence in this case, and this case only, and to hear from all witnesses with any material evidence to offer, as well as expert witnesses, and to consider documentary and photographic evidence, in order to ensure that a thorough, just and fair investigation was accomplished. It has now completed its investigation into *The Matter of the Investigation into the Death of Eric Garner*.

Regarding comments that I can or cannot make, unlike other jurisdictions that have statutes that permit a district attorney to disclose specific details regarding what took place during a grand jury proceeding, New York law does *not* permit a district attorney to engage in such disclosure. Rather, only upon a showing of a compelling and particularized need for access can disclosure of grand jury information, limited as it may be, be made in a public forum.<sup>1</sup>

After the grand jury reached its decision this afternoon, I applied for a court order pursuant to CPL § 190.25(4)(a) seeking authorization to publicly release specific information in connection with this grand jury investigation. That application is under consideration by the court, and I am therefore constrained by New York law to reveal nothing further regarding these proceedings.

Attached hereto is some general information regarding grand juries in New York.

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<sup>1</sup> Criminal Procedure Law §190.25(4)(a) provides that the Grand Jury proceedings are secret and, thus, a strong presumption of confidentiality attaches to the record of Grand Jury proceedings. This presumption must be overcome by a demonstration of "a compelling and particularized need for access" to the Grand Jury material. *Matter of District Attorney of Suffolk County*, 58 N.Y.2d 436 (1983). Upon such a demonstration, the court must then balance the public interest for disclosure against the public interest favoring secrecy.

## **INFORMATION CONCERNING GRAND JURIES IN NEW YORK**

- Grand jury proceedings in New York are governed by Article 190 of the New York Criminal Procedure Law.
- Because grand jury procedures are governed by state law, grand jury procedures in New York can be different from procedures in other states.
- Recent events in other jurisdictions may have created unrealistic expectations regarding what can be disclosed regarding the proceedings of a New York grand jury. For example, the state of Missouri has enacted “Sunshine Laws” that permit disclosure of grand jury testimony and evidence.
- It is important to understand that under New York law everything that happens in the grand jury is secret; therefore only very limited or no disclosure is permitted. Moreover, those limited disclosures can only be made after an application has been made for a court order allowing disclosure, and said application has been granted.
- Disclosure of anything further may be a violation of New York law.
- For example, the gender and racial makeup of the grand jury is not disclosed.
- A District Attorney, for a variety of factors, including, but not limited to, the great importance and public concern focused on a matter such as when an unarmed citizen dies while being taken into police custody, and because of the large amounts of investigative testimony and evidence to be considered, may choose to request the empaneling of a dedicated investigatory grand jury.
- Often, grand juries are hearing cases in which an arrest has been made and the prosecutor has six days to indict. In contrast, investigative grand juries typically have greater flexibility to hear a broader scope of evidence before making a determination.
- The decision to make that request for the empaneling of a dedicated grand jury, the review of that request, and the granting of that request, as well as sending out juror notices, empaneling of the dedicated grand jury by a judge, and the swearing in of the dedicated grand jury, can be a time consuming process in and of itself. All of this occurs before any testimony is heard or evidence is presented in a case.
- In the instant matter, the location of where the incident occurred was extensively canvassed for several weeks by numerous investigators, in an effort to identify as many witnesses and to gather as much evidence as could be found. This is important to ensure a complete and fair investigation. Once again, such activities can be time consuming and, once again, this was done before any testimony was heard or evidence was presented.

- In New York, the grand jury is an arm of the court. It is not an agent of the prosecutor or the police. Nor does the grand jury decide whether or not a person has been proven guilty. That is the responsibility of the trial jury. The grand jury decides whether or not a person should be formally charged with a crime.
- In New York, the District Attorney does not make opening statements, closing statements or arguments to the grand jury, nor attempt to influence its decision. The District Attorney presents evidence, instructs grand jurors on the relevant principles of law, and the grand jury makes its decision based on the evidence and the law.
- In New York, a grand jury has 23 members. A quorum of 16 grand jurors must be present to hear evidence. Sixteen grand jurors who have heard all of the relevant and critical evidence must be present to deliberate. To formally charge a person with a crime, at least 12 grand jurors who have heard all the evidence and the legal instructions must agree that there is legally sufficient evidence and reasonable cause to believe the accused person committed a crime.