EMERY CELLI BRINCKERHOFF & ABADY LLP

RICHARD D. EMERY
ANDREW G. CELLI, JR.
MATTHEW D. BRINCKERHOFF
JONATHAN S. ABADY
EARL S. WARD
ILANN M. MAAZEL
HAL R. LIEBERMAN
DANIEL J. KORNSTEIN
O. ANDREW F. WILSON
ELIZABETH S. SAYLOR
DEBRA L. GREENBERGER
ZOE SALZMAN
SAM SHAPIRO
ALISON FRICK
DAVID LEBOWITZ
HAYLEY HOROWITZ
THEODOR O. OXHOLM
ALANNA SMALL

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TELEPHONE
(212) 763-5000
FACSIMILE
(212) 763-5001
WEB ADDRESS
www.ecbalaw.com

CHARLES J. OGLETREE, JR.
DIANE L. HOUK

December 14, 2015

By Federal Express and Email

Loretta Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Vanita Gupta
Acting Assistant Attorney General for Civil Rights
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Steven Dettelbach
United States Attorney for the Northern District of Ohio
Office of the United States Attorney
801 West Superior Avenue, Suite 400
Cleveland, OH 44113-1852

Re: Federal Investigation Required in Cleveland's Tamir Rice Police-Shooting Case

Dear Attorney General Lynch, Ms. Gupta, and Mr. Dettelbach:

This firm, together with The Chandra Law Firm LLC and FirmEquity, represent the mother, sister, and estate administrator of Tamir Rice, the 12-year-old boy who was shot and killed by Cleveland police officers in an encounter that lasted less than one second on November 22, 2014. We write to request that your office launch an independent investigation into Tamir's death because the local prosecutor has abdicated his responsibility to conduct a fair and impartial investigation and has severely compromised the grand-jury process.

We recognize that a request for federal intervention should be made only under exceptional circumstances, but such circumstances exist here. For many months, we have witnessed a series of anomalies and biased practices by the local prosecutor suggesting that the investigation into this tragic shooting was not being conducted in a fair and impartial manner.

Last week, after taking the unusual step of asking the crime victim's family to gather evidence to present to the grand jury (when that should be the prosecutor's job), the prosecutors put the expert witnesses located by Tamir's family on the stand. But, instead of allowing them to explain their

findings to the grand jury, the prosecutors immediately launched into an improper cross-examination that included smirking and mocking the experts, pointing a toy gun in an expert's face, and suggesting that the experts were not sufficiently concerned with preserving the police officers' "liberty interest." This treatment of the expert witnesses who Tamir's family had to find after the prosecutor refused to do so made it clear that these prosecutors are not engaged in a search for truth or justice, but rather are conducting a charade process aimed at exonerating the officers. In light of the prosecutors' extreme bias, we are compelled to bring this situation to your attention and request a formal intervention by the Department of Justice ("DOJ").

The Fatal Shooting of Tamir Rice Captured on Video

Of the many police shootings that have occupied the national attention in recent years, few are more tragic and disturbing than this one. Tamir Rice was a 12-year-old child. On Saturday, November 22, 2014, he and his 14-year-old sister, T.R., were at the Cudell Recreation Center near their home in Cleveland. Around 3:30 p.m. that afternoon, Tamir was in an outdoor space in the park, playing with an airsoft toy gun he had borrowed from a friend earlier that day. Someone saw him and called 911, reporting that there was an individual, "probably a juvenile," who had a gun, which was probably a "fake." Within minutes, as captured on video, two Cleveland police officers, Timothy Loehmann and Frank Garmback, drove their car at high speed into the park and pulled up within a few feet of Tamir (who was standing by himself and was not even holding the toy gun). Within less than one second, Officer Loehmann jumped out of the still-moving police car and fatally shot Tamir in the abdomen. Tamir collapsed to the ground. At the time of their approach, the patrol-car windows were up such that it would have been impossible for the police to issue any audible commands to Tamir. Moreover, recently available expert and scientific analysis demonstrates that Loehmann's gun had to have been unholstered with his hand on the trigger as he exited the vehicle. This was an instantaneous shooting that was plainly unjustified and unreasonable.

Approximately one minute after the fatal shots were fired, Tamir's sister, T.R., ran towards him crying and screaming "my baby brother, they killed my baby brother." Officer Garmback tackled her to the ground. When she tried to crawl away, Officer Loehmann dragged her back down. The officers then put T.R.—who they knew was a child and the sister of the boy they had just shot—in handcuffs in their police car, right next to where her brother lay injured and dying on the ground.

Neither of the officers ever gave Tamir any medical treatment or care—not even basic first aid or CPR.

When Tamir's mother, Samaria Rice, heard about the shooting and rushed to the park, the officers refused to release T.R. into her custody and told her she had to choose between going to the hospital with her fatally wounded 12-year-old son and staying with her handcuffed 14-year-old daughter, who was in the back of the car with the very same officers who had shot her son. When Ms. Rice chose to go with Tamir, Cleveland police officers interrogated T.R. without any adult present.

The Long-Standing and Systemic Excessive Force Problem in the Cleveland Police Division

Regrettably, the tragic shooting of Tamir Rice is not an anomaly. The Cleveland Police Division has a long history of systemic problems with excessive force generally and unjustified shootings particularly. Indeed, as you are aware, the DOJ has been monitoring the Cleveland Police

Division ("CPD") for more than a decade. In December 2014, your department found there was reasonable cause to believe that the CPD engages in a pattern and practice of using unreasonable and unnecessary force. DOJ's findings are scathing, highly relevant, and include the following:

- The CPD has a widespread and longstanding problem with excessive use of force and unjustified shootings.

- Cleveland police officers fired guns at people who did not pose an immediate threat of death or serious bodily injury to officers or others, and CPD officers used guns in a careless and dangerous manner.

- Cleveland police used unreasonable and excessive force on minor children, including one incident where an officer punched a handcuffed 13-year-old boy in the face several times after arresting him for shoplifting.

- Cleveland police officers too often escalated incidents instead of using accepted tactics to de-escalate tension.

The Shooting Officer Was Clearly Unfit for Duty

These long-standing, systemic problems obviously have a profound impact on a police department's culture and practices, including delinquency, incompetence, and indifference in the hiring and retention of competent personnel. Here, that incompetence resulted in the hiring of a police officer who never should have been carrying a gun and working in uniform. Astonishingly, the Cleveland police hired the shooter, Officer Timothy Loehmann, even though he was manifestly unfit for duty—after he had been effectively discharged from his first policing job for lying to his supervisors and having an emotional breakdown on the firing range that was so serious it resulted in his supervisor taking his gun away and recommending his termination, concluding: "It just appears that he is not mature enough in his accepting of responsibility or his understanding in the severity of his loss of control on the range . . . I do not believe time, nor training, will be able to change or correct these deficiencies." Loehmann was a ticking time bomb waiting to explode, but he was nevertheless hired by the CPD.

This Case Merits Criminal Prosecution

The evidence is overwhelming that this precipitous, unreasonable, and unjustified shooting requires criminal prosecution.

Recognizing the particular vulnerability to young children, the Ohio legislature has promulgated a specific provision in its criminal code that permits aggravated-murder charges when the victim is under 13 years old. In relevant part, the statute provides: "No person shall purposely cause the death of another who is under thirteen years of age at the time of the commission of the offense." Ohio R.C. 2903.01(C). Ohio's aggravated-murder statute thus does not require any prior calculation and design when the victim is under the age of 13. All that is required is the purpose to cause the death of someone under the age of 13. It does not matter whether Officer Loehmann knew that Tamir was under 13. *See State v. Drummond*, 111 Ohio St.3d 14, 2006-Ohio-5084, 854 N.E.2d 1038, ¶ 235.

This provision aside, the conduct by the offending officers here, at a minimum, meets the criteria for reckless or negligent homicide. Ohio R.C. 2903.041 ("No person shall recklessly cause the death of another."); Ohio R.C. 2903.05 ("No person shall negligently cause the death of another.")

Any objective, unbiased review of Ohio law makes clear the applicability and appropriateness of criminal charges in this case. In fact, a sitting member of the Ohio judicial branch found probable cause to believe that criminal liability attached to the facts of this case, based simply on a review of the objective video footage. After seeing the video, Judge Ronald B. Adrine of the Cleveland Municipal Court found probable cause to charge Officers Timothy Loehmann and Frank Garmback, writing: "The video in question is notorious and hard to watch. After viewing it several times, this court is still thunderstruck by how quickly this event turned deadly."

Whether or not the officers here are ultimately convicted, and regardless of the specific charges levied, there is no question that the proper administration of justice requires presentation of evidence to the grand jury in an unbiased and fair manner. It is now clear, however, that this has not and is not happening in this supremely important case.

Prosecutorial Bias and Abuse of the Grand-Jury Process In This Case is Indisputable

Our office, together with Samaria Rice and other members of her family, have met with the local prosecutors on several occasions. In our initial meeting, we emphasized our willingness to work cooperatively to ensure a just and fair outcome in this case. Our principal question for the prosecutors at that time, more than 7 months after the death of Tamir, was why the investigation was taking so long. We noted a number of recent examples of high-profile police shootings in which local prosecutors had moved expeditiously and responsibly to indict police officers where there was probable cause of criminal wrong-doing. Specifically, we cited the recent examples of prosecutorial action in Baltimore, Maryland (the Freddie Gray case), in North Charleston, South Carolina (the shooting of Walter Scott), and Marksville, Louisiana (the shooting of 6-year-old Jeremy Mardis). In the latter case, we noted that Jeremy Mardis was a white child shot by two black officers, who were promptly indicted within 72 hours of the shooting.

The response of Mr. McGinty was to insist that his office was attempting to conduct a "thorough and fair" investigation. They also advised us in an early meeting that the delay was in part due to their attempts to obtain "expert opinions" for presentation to the grand jury. When we inquired as to what subject matter the experts would be offering evidence on, we were told they would opine on the ultimate issue in the case, *i.e.*, whether the use of force was reasonable and justified. We expressed surprise that such testimony would be offered at the grand-jury phase under these circumstances, as such a course of action appeared to us to be highly unusual, if not unprecedented. Following our meeting and further research confirming how irregular this proposal was, we made an extensive record of our vehement objection to the prosecutor's intent to use "expert testimony" of this sort in the grand jury under these circumstances.

Significantly, we also asked for the identity of the purported "experts." The prosecutors declined to reveal their identities, but stated that their "experts" would be people "you have never heard of." This struck us as both odd and revealing as it suggested the possibility that prosecutors were on a search for a particular point of view, that the "experts" would have obscure identities, and that the search for them was taking a long time.

The Local Prosecutor Abrogated Rules Regarding Grand-Jury Secrecy and Disseminated Patently Biased and Pro-Police Reports in an Effort to Exonerate the Officers

Under governing Ohio law, matters before the grand jury are supposed to be kept secret and not disclosed to the public. *See* Ohio Crim. R. 6(E) (stating that "Deliberations of the grand jury . . . shall not be disclosed" and providing that a "prosecuting attorney . . . may disclose matters occurring before the grand jury . . . *only when directed by the court*").

Yet here, Mr. McGinty's office, and he personally, have made numerous disclosures to the media, all under the guise of a claimed intent to be "transparent." This is a questionable practice at best and certainly seems to directly conflict with the applicable law.

The disclosure to the public of supposed "expert reports" purporting to exonerate the officers before the grand jury takes a vote on this case highlights this troubling practice. In October of this year, almost a year after the shooting of Tamir Rice, the prosecutors released to the media a series of alleged "expert reports" claiming, incredibly, that the shooting of this child was reasonable and constitutionally justified. Each of the reports was overtly biased and thoroughly incredible. The first was authored by someone with a documented pro law-enforcement bias—Kimberly Crawford—whose analysis of the Ruby Ridge shooting DOJ rejected because it was legally inaccurate and excessively pro-police. A second alleged expert recruited by the prosecutors was equally biased: Lamar Sims, who had spoken at an event hosted by Prosecutor McGinty's office last spring had previously made clear on television that he believed the police officers were justified in killing Tamir. A third alleged expert was Ken Katsaris, who has been precluded from testifying multiple times by courts across the country. All three of these so-called "experts" made improper, outlandish, and speculative assumptions without any legitimate evidentiary basis in their attempts to exonerate the officers. They manufactured non-existent testimony, ignored critical facts, and failed to apply binding Sixth Circuit precedent for police-use-of-deadly-force cases. They ignored the crucial fact that the officers' tactics created the perceived danger they used as reason to shoot Tamir. Our letters to Prosecutor McGinty detailing the many problems with these so-called experts and their reports are attached here for your review. *See* Exs. 1 & 2.

The disclosure in October of these baseless and misleading reports made clear what the prosecutor had been doing all these many months: canvassing the nation for someone willing to opine that the shooting of Tamir Rice was justified. It took the office almost a year to locate such people, but they succeeded in that much and, in so doing, demonstrated their true, underlying agenda, which was not to investigate and prosecute in a fair and independent manner, but rather to do everything possible to ensure that no true bill would issue in this case.

The Local Prosecutor's Demeaning Comments about the Crime Victim's Mother

But the local prosecutor's efforts in this regard did not stop there. In November, Mr. McGinty was recorded on tape at a press conference suggesting that Tamir's mother, Samaria Rice, and her representatives were motivated by "economic interests." It is unusual, perhaps unprecedented, for a prosecutor to publicly impugn the motives of a crime victim's mother's search for justice for her dead child by suggesting she is motivated by money. These comments provide a revealing insight into Prosecutor McGinty's feelings about Tamir Rice, his family, and his background.

Our letter to Prosecutor McGinty objecting to these comments is also attached here. *See* Ex. 3.

The Local Prosecutor Violates Supreme Court Precedent Allowing the Shooter and His Partner to Read Self-Serving Statements without Being Cross-Examined, Despite the Officers' Waiver of Fifth-Amendment Privilege

Just this month, the local prosecutors fortified their year-long effort to protect the police officers with a biased presentation to the grand jury, but they had to violate clearly established Supreme Court precedent to do it.

In December, Mr. McGinty allowed Officers Loehmann and Garmback (*i.e.*, the shooter and the driver of the vehicle) to read prepared, self-serving statements to the grand jury after taking the oath, and then invoke the Fifth Amendment and refuse to answer a single question.[1] Prosecutor McGinty never went to the court to seek an order compelling the officers to answer questions or face the required sanction of contempt.

Under longstanding Supreme Court precedent, by testifying under oath about their conduct toward 12-year-old Tamir, the officers waived their Fifth Amendment right to be silent in the grand-jury proceeding on that subject because a witness can "*not take the stand to testify in [his] own behalf and also claim the right to be free from cross-examination on matters raised by [his] own testimony on direct examination*." *Brown v. United States*, 356 U.S. 148, 155–56 (1958) (emphasis added). As the Supreme Court has explained, a witness "cannot reasonably claim that the Fifth Amendment gives him not only this choice [to testify or not] but, if he elects to testify, an immunity from cross-examination on the matters he has himself put in dispute. It would make of the Fifth Amendment not only a humane safeguard against judicially coerced self-disclosure but a positive invitation to mutilate the truth a party offers to tell." *Id.* Under this clearly established law, there is no question that Officers Loehmann and Garmback waived their Fifth Amendment privilege by appearing before the grand jury, taking the oath, and reading their own self-serving statements.

No one—now except police officers in Cuyahoga County apparently—is permitted to have it both ways: make a self-serving statement under oath but be free of any cross-examination to expose the truth. The officers' statements were replete with opportunities for aggressive cross-examination. The irregular tactics these officers used, the contradictions between—and physical impossibilities claimed in—their statements, and the facts left unsaid yet apparent from the video evidence are ripe for cross-examination by any prosecutor interested in seeking the truth.

Potentially Perjurious Testimony before the Grand Jury

Providing the supposed targets of this grand-jury investigation the extraordinary and improper opportunity to testify without being cross-examined was not harmless error. It appears to have enabled the officers to place before the grand jury highly misleading and/or untruthful testimony. Both officers testified that before the shooting they issued repeated commands to Tamir that he show his

[1] This fact was made public by the officers' own lawyer and the police union. *See* Cory Shaffer, *Officers in Tamir Rice Case Were Sworn in Before Grand Jury, Answered No Questions, Union Says*, Cleveland.com (Dec. 3, 2015), *available at* http://www.cleveland.com/metro/index.ssf/2015/12/officers_in_tamir_rice_case_we.html.

hands, that they saw a gun, and that they saw him reach for his waistband. But a recently released enhanced video and an expert scientific analysis demonstrate that none of that was possible. A nationally recognized expert in the field of biomechanics, Dr. Jesse Wobrock, has determined that the officers' statements are demonstrably false: for example, the video contradicts the officers' claim that Tamir was reaching for a gun in his waistband; on the contrary, his hands were still in his pockets at the moment he was shot. And it was physically impossible for Officer Loehmann to have shouted multiple commands to Tamir (as he claimed) in the less than one second that elapsed between the time Officer Loehmann jumped out of the car and the time when he shot Tamir. Moreover, the video demonstrates the toy gun was not visible and could not have been seen by the officers before the shooting.

But Prosecutor McGinty let these officers get away with telling their stories and not answering any of these questions.

The Local Prosecutor's Biased, Unprofessional, and Unethical Attack of the Victim's Family's Expert Witnesses

A crowning act of prosecutorial misconduct occurred just last week. Although the Rice family had strenuously objected to the use of experts in the grand jury, because it had become clear that the presentation was so biased in favor of the police, they elected to retain their own experts in an attempt to provide objective and accurate information for consideration by the grand jury.[2] Specifically, the family retained Roger Clark and Jeffrey Noble. Both are nationally known law-enforcement experts with impeccable credentials. Jeffrey Noble was a police officer for 28 years, including serving as Deputy Chief of Police of Irvine and Westminster, in California. Mr. Noble has extensive experience as an expert on police use of force and has been retained as an expert by many police departments across the country, including Chicago, San Francisco, and Austin. Roger Clark is a 27-year veteran of the Los Angeles County Sheriff's Department. Mr. Clark has been recognized as an expert in the police use of force in courts across the country and his work has been heavily relied on by courts, including the Fifth and Ninth Circuits Courts of Appeals. After a review of the record, both Noble and Clark authored reports finding that the killing of Tamir Rice was unjustified, unreasonable, and not supported by any standard or protocol of proper policing. They further concluded that the prosecutor's experts were, for multiple reasons, not worthy of belief.

Although Mr. McGinty had promised to present any and all findings to the grand jury in a fair and impartial manner, nothing could have been further from the truth. Both Noble and Clark have testified hundreds of times in federal and state courts across the country, over many decades. When they left the grand jury in this case after testifying on Monday, December 7, 2015, both were shocked by the hostile, unprofessional, and unfair questioning visited upon them by the local prosecutors in this case. For hours, each was subjected to mocking and ridiculing questioning. Neither was given the opportunity to present his findings in a coherent manner. On numerous occasions, Mr. Noble was forced to admonish the prosecutors that their questions and behavior were unprofessional and unfair. At one point, one of the prosecutors, James Gutierrez, took a seat amongst the grand jurors and openly smirked at Mr. Noble's responses to questions.

At another point, one of the prosecutors pulled a toy gun out of his pants and stuck it in

[2] Under ordinary circumstances, no crime victim's family is called upon to assume responsibility to provide information to the grand jury. That is the prosecutor's obligation.

Mr. Clark's face, demanding whether that was sufficient threat for an officer to use deadly force. Of course, in addition to being highly improper, this demonstration was also highly misleading to the grand jurors: no one claims—and the video conclusively refutes—that Tamir was pointing a gun at the officer's face. Another prosecutor asked Mr. Noble whether he was "seriously asking this grand jury to take away these officers' liberty?" That question was improper to ask of a police use-of-force expert and also highly misleading to the grand jury: a grand jury indicts if there is probable cause, it does not determine criminal guilt, much less sentence anyone to a loss of liberty. As you are aware, such a question would be improper in a jury trial as well. Neither Mr. Clark nor Mr. Noble was given the opportunity to present his findings to the grand jury, but instead was bombarded by cross-examination from the two prosecutors in the room. It was also apparent that the grand jury had not been provided with their reports in advance of their testimony as Prosecutor McGinty had promised the public and the Rice family.

Of course, no fair-minded lawyer or court objects to vigorous and fair cross-examination. But this is not an example of that. It is clear what is taking place in this case: local prosecutors have been on a year-long mission to exculpate these officers and shield them from exposure to criminal liability, no matter what the evidence shows. Here, the palpable and manifestly unfair treatment of these experts is suppressing the truth and preventing justice from being served and is part of the larger, orchestrated effort to subvert the grand-jury process. When it has suited the local prosecutor, he has violated the rules of grand-jury secrecy to taint public and grand-juror perception with the dissemination of misleading "expert reports." In the same proceeding, however, he has exploited the secrecy of the grand jury to keep from public view his disproportionate and plainly unfair treatment of the family's experts who are attempting to demonstrate what actually happened on November 22, 2014.

Federal Intervention is Required In This Case

This *de facto* sabotage of the family's experts through improper cross-examination is all the more egregious when, as here, it follows an astounding decision by the same prosecutor to permit the target officers to testify in a self-serving and selective way with no cross-examination whatsoever, in plain violation of Supreme Court precedent. No objective observer looking at what is taking place here could conclude anything other than that this process has been corrupted and is unfair.

When local law enforcement errs in this way, the DOJ has an obligation to intervene and historically has done so on numerous occasions. At this point, on this record, it is clear that a grave miscarriage of justice is underway and that federal intervention is called for. There is no way the residents of Cleveland or the citizens of the nation can have confidence in the administration of justice if this kind of conduct is permitted to proceed unchecked.

For all these reasons, we ask that the Department of Justice launch a formal investigation into the death of Tamir Rice and into the conduct of the local prosecutor's office as it relates to their work in this case.

Should you need additional information, we will make ourselves available at your request. Thank you for your consideration.

Respectfully submitted,

Jonathan S. Abady
Earl S. Ward
Zoe Salzman

Encl.

c. Subodh Chandra (*via email*)
William Mills (*via email*)
Prosecutor Timothy McGinty (*via email*)
Matthew Meyer, Assistant Prosecuting Attorney (*via email*)
James Gutierrez, Assistant Prosecuting Attorney (*via email*)

Exhibit 1

EMERY CELLI BRINCKERHOFF & ABADY LLP

RICHARD D. EMERY
ANDREW G. CELLI, JR.
MATTHEW D. BRINCKERHOFF
JONATHAN S. ABADY
EARL S. WARD
ILANN M. MAAZEL
HAL R. LIEBERMAN
DANIEL J. KORNSTEIN
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ZOE SALZMAN
SAM SHAPIRO
ALISON FRICK
DAVID LEBOWITZ
HAYLEY HOROWITZ
THEODOR O. OXHOLM

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TELEPHONE
(212) 763-5000
FACSIMILE
(212) 763-5001
WEB ADDRESS
www.ecbalaw.com

CHARLES J. OGLETREE, JR.
DIANE L. HOUK

October 16, 2015

Via Federal Express and Email

Timothy McGinty
Cuyahoga County Prosecutor's Office
The Justice Center, Courts Tower
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113

Re: Justice for Tamir Rice

Dear Prosecutor McGinty:

As you know, this firm, together with The Chandra Law Firm LLC and FirmEquity, represent Samaria Rice, her daughter, T.R., and the Estate of Tamir Rice. We write to express the Rice family's disappointment and grave concern regarding your office's handling of the criminal investigation of the police officers who killed Tamir.

The delay in presenting this case to a grand jury, the decision to retain pro-police "experts" and release their reports to the media on a Saturday night over a holiday weekend (after sharing them with media in advance but refusing to give them to the Rice family), and the obvious shortcomings of the reports themselves, have all contributed to make the Rice family feel that your office is not committed to securing an indictment in this case. It now appears that the grand jury presentation will be nothing short of a charade aimed at whitewashing this police killing of a 12-year-old child.

The Delay in Presenting the Case to the Grand Jury

Police officer Timothy Loehmann fatally shot Tamir Rice on November 22, 2014. But, to date, your office has not yet presented the case to a grand jury. While we understand the general need to proceed with caution and thoroughness, no reasonable prosecutorial effort should be taking this long, especially under the circumstances of this case.

In sharp contrast to the delay here, recently, in South Carolina and Baltimore, prosecutors moved expeditiously to indict and prosecute officers responsible for fatal police

shootings. In North Charleston, South Carolina, a grand jury indicted police officer Michael Slager on a murder charge on June 8, 2015—just over two months after Slager fatally shot Walter Scott on April 4, 2015. In Baltimore, on August 19, 2015, a grand jury indicted police officer Wesley Cagle for attempted first-and second-degree murder, as well as first- and second-degree assault and use of a handgun in a crime of violence, for his December 28, 2014 non-fatal shooting of Michael Johnson.

- These cases demonstrate that when prosecutors do their job diligently and present an accurate, truthful account of a police shooting to a grand jury, grand juries can and do indict.

- Loehmann shot Tamir before Walter Scott or Michael Johnson were shot, but almost a year later your office still has not presented the case to a grand jury.

When Tamir's family questioned this long delay, your office repeatedly told them that you were attempting to ensure a thorough investigation. But your release this past Saturday night of two plainly biased "expert" reports leads us to the inescapable conclusion that the true agenda here is to facilitate a presentation to the grand jury that is inappropriately skewed in favor of the police.

The Retention of Pro-Police "Experts" to Improperly Influence the Grand Jury

Experts are generally not permitted to opine on the ultimate issue (here, whether the use of force was unreasonable) before a grand jury. The unorthodox, if not unprecedented, use of expert reports at this stage of the criminal proceeding is all the more troubling because these reports are clearly designed to exculpate the officers. Typically, biased reports of this type are offered by criminal defense lawyers at trial. Here, it appears your office has abandoned its obligation to diligently pursue criminal charges against the killer of a 12-year-old boy because the shooter was a police officer. We view this as an abuse of the grand jury process. Regrettably, under these circumstances, we fear the grand jury is being utilized to cover up an improper effort to protect police officers who should be subject to the criminal law.

There is no question that the "experts" you selected were biased:

- Lamar Sims: Your office hired Lamar Sims in July 2015—two months *after* he gave a television interview on Denver public access television, which was subsequently posted on YouTube, in which he expressed pro-police opinions about the shooting of a young child playing with a toy gun, a clear reference to the shooting of Tamir Rice.[1] Sims also participated in an event centered on the police's use of force in March 2015 hosted by your office, where he expressed pro-police sentiments.[2] Your decision to hire Sims, of all the thousands of prosecutors in the country you could have chosen, *after* he made these comments, indicates that you were looking for an expert who was decidedly

[1] http://www.wkyc.com/story/news/investigations/2015/10/12/investigator-video-records-show-tamir-rice-experts-held-pro-police-stance/73833152/

[2] http://www.cleveland.com/court-justice/index.ssf/2015/03/three_takeaways_from_county_pr.html#comments

sympathetic to the police and who would look to excuse Loehmann, not hold him accountable.

- Kimberly Crawford: You hired Kimberly Crawford even though she has been discredited as an expert in this field after the U.S. Department of Justice rejected her opinion in the high profile 1992 fatal Ruby Ridge shootings on the grounds that her legal analysis was flawed, distorted the applicable caselaw, and improperly quoted cases selectively in an effort to exonerate the police in their use of deadly force.[3] If your office was genuinely seeking a neutral expert, why would you select someone whose views on police force the federal government found to be unduly weighted in favor of the police?

In short, neither Crawford nor Sims could fairly be described as independent or neutral. They both have an unmistakable pro-law enforcement bias. Your delay in proceeding to the grand jury for nearly a year, while your office strained to find these two "experts" whom you have misleadingly labeled as neutral, is deeply disturbing and disappointing.

The "Expert" Reports Distort Both the Law and the Facts

Our concerns with Sims and Crawford are reflected in the substantial deficiencies and inaccuracies in their reports as to both the facts and the law.

As to the facts:

- Both reports are speculative. Remarkably, neither Loehmann nor Garmback have given sworn testimony about what happened and neither "expert" ever interviewed the officers. As a result, both so-called "experts" resort to pure speculation about what they think the officers *might* have seen, said, or thought, including the central assumption that Loehmann believed "Rice posed a threat of serious physical harm or death."

- Both reports also improperly rely on hearsay—sometimes even multiple levels of hearsay—which is inherently unreliable and legally unsound. For example, Sims goes so far as to say that the statement Loehmann allegedly made to the FBI agent that he gave commands to Tamir before shooting is of "particular import"—even though that statement is plainly hearsay and demonstrably false, as the video makes it clear that there was no time for Loehmann to issue any commands.

- The reports contradict each other. For example, while Crawford repeatedly claims that the video shows Tamir "reaches toward his right side waist and lifts his jacket," Sims admits that "the video is grainy and it is unclear - from the video - whether Rice reaches for his gun."

- The reports fail to explore the credibility issues surrounding police claims that the officers warned Tamir three times immediately before shooting, when the 1.7-second time frame makes it apparent that did not happen. The "experts" made no attempt to

[3] http://law2.umkc.edu/faculty/projects/ftrials/weaver/dojrubyIVF.htm

trace back those demonstrably false claims to the officers themselves—the natural source—which would undercut the officers' credibility.

- Both Sims and Crawford spend much time arguing that Loehmann could not have known that Tamir was a minor or that the gun was a toy. But given the undisputed fact (as shown on the video) that Loehmann shot Tamir within 1.7 seconds of arriving at the scene, no reasonable officer would have had time to make any assessment at all about Tamir's age or toy (which he was not even holding when Loehmann shot him). No reasonable officer would even have had time to assess whether Tamir matched the description provided by the 911 caller, particularly as Tamir was not on the swings (as the caller had said) but in the gazebo. But according to these so-called "experts," it is reasonable for police officers to drive into a park (which Sims at least is willing to acknowledge is "a location where there may be children and young people"), and immediately open fire on any African American boy they encounter there.

- The reports ignore the influence of race on the officers' actions. Would these "experts" really have reached the same conclusion if Loehmann and Garmback had responded to a call in a park in an affluent suburban neighborhood and the 12-year-old they shot within 1.7 seconds of arriving was the Caucasian child of a public figure, celebrity, or professional? We think not.

As to the law, both Sims and Crawford argue that Garmback and Loehmann's decision to drive their car right up to Tamir, and Loehmann's decision to then immediately exit the car while shooting his gun, should not be considered in assessing the reasonableness of the use of force. That is not the law. A police officer's decision to create a dangerous situation is highly relevant in determining whether or not his use of force was excessive. "Where a police officer unreasonably places himself in harm's way, his use of deadly force may be deemed excessive." *Kirby v. Duva*, 530 F.3d 475, 482 (6th Cir. 2008). Police officers are not constitutionally allowed to create a dangerous situation for themselves when one did not exist and then use lethal force to gun their way out of the danger they created.

The Video Shows What Really Happened

The Sims-Crawford suppositions are especially troubling given the objective video footage of the shooting. There is no dispute that the video shows:

- Tamir was by himself in the gazebo when Loehmann and Garmback drove up. Clearly, he was not threatening or endangering anyone at that time. The officers created the danger the "experts" now use as justification for this homicide.

- Tamir was not even holding the toy gun when Loehmann and Garmback arrived.

- Garmback hurriedly pulled the car right up next to Tamir, so that the passenger side of the car was only a few feet away from Tamir.

- Loehmann immediately jumped out of the car and, within 1.7 seconds, fired two shots at Tamir.

- There was no time for Loehmann or Garmback to have issued any intelligible commands to Tamir, much less for Tamir to respond to any commands, before Loehmann fired.

- Loehmann shot Tamir before Garmback had even fully stopped the car and gotten out.

- After Tamir collapsed to the ground, fatally wounded, neither Loehmann nor Garmback gave him *any* medical assistance. For at least four minutes, they just stood around.

- When Tamir's 14-year-old sister ran towards her wounded brother crying, Loehmann and Garmback tackled her to the ground, handcuffed her, and put her in their police car—right next to where her brother lay fatally injured.

A reasonable grand jury reviewing this video and other available evidence would conclude that Loehmann and Garmback should face criminal charges. We know that, in part, because at least one independent fact-finder already reached that conclusion. After seeing this video, Judge Ronald B. Adrine of the Cleveland Municipal Court found probable cause to charge Officers Timothy Loehmann and Frank Garmback, writing: "The video in question is notorious and hard to watch. After viewing it several times, this court is still thunderstruck by how quickly this event turned deadly."

Loehmann Was Plainly Unfit to be a Police Officer

- Before the City of Cleveland hired him, Loehmann worked as a police cadet for the City of Independence, Ohio. Independence police decided to terminate Loehmann's employment after an incident on the gun range where Loehmann essentially had a mental breakdown. In the episode, during a firing range examination, Loehmann began crying, was distracted, and was not following instructions. As a result, the supervising officer was forced to confiscate Loehmann's gun.

- Loehmann's personnel file documented that he "could not follow simple directions, could not communicate clear thoughts nor recollections, and his handgun performance was dismal."

- When the supervising officer attempted to discuss the situation with Loehmann, Loehmann told his supervisor "what I want is for you to just shut up."

- A similar incident had occurred when Loehmann was in the police academy.

- Importantly, Loehmann's personnel file also documents that he lied to his supervisors on at least two occasions.

- Loehmann's employment file noted: "It just appears that he is not mature enough in his accepting of responsibility or his understanding in the severity of his loss of control on the range."

- In September 2013, Defendant Loehmann failed the Cuyahoga County Sheriff Department's written entrance exam earning only 46 points out of 100, on an exam with a passage requirement of a minimum of 70 points.

- Before Loehmann was hired by Cleveland, he applied to work in five different police departments, including Akron, Euclid, and Parma Heights, all of which refused to hire him.

It is clear that Timothy Loehmann should have never been hired by the Cleveland Division of Police. But rather than acknowledging Loehmann as a cadet who was found emotionally unfit for duty, who lied to his supervisors, who failed the police entrance exam and who was rejected by at least five other police departments, your supposed "experts" attempt to reinvent him as a model officer and speculate, without ever having spoken to him, that he acted reasonably in shooting a 12-year-old child where there is no credible evidence that the child posed any threat whatsoever, much less a threat justifying the precipitous use of deadly force. All of this evidence calls into question the credibility of any assumption or claim that Loehmann was reasonably in fear for his life. Under these circumstances, any reasonable observer would question your office's good faith intention to present this case in a proper manner to the grand jury.

The Department of Justice Already Found Cleveland Police Have a Pattern of Excessive Force

Finally, we note that neither of your so-called "experts" addressed nor acknowledged the undisputed fact that the shooting of Tamir Rice was carried out by officers from a division that has a well-documented and notorious history of using excessive force. In December 2014, the U.S. Department of Justice found there was reasonable cause to believe that the Cleveland police division engages in a pattern and practice of using unreasonable and unnecessary force. DOJ's findings are scathing and highly relevant.

- DOJ found widespread and longstanding problems in the police department with regard to the excessive use of force and shootings specifically.

- DOJ expressly found that Cleveland police officers fired guns at people who did not pose an immediate threat of death or serious bodily injury to officers or others, and that officers used guns in a careless and dangerous manner.

- DOJ found that the Cleveland police used unreasonable and excessive force on minor children, including one incident where an officer punched a handcuffed 13-year-old boy in the face several times after arresting him for shoplifting.

- DOJ found that the Cleveland police fostered an "us-versus-them" mentality, as evidenced by the war-zone sign hanging in the police vehicle bay that reads: "Forward Operating Base."

- DOJ found that Cleveland police officers too often escalated incidents instead of using accepted tactics to de-escalate tension.

A Special Prosecutor Is Needed

The delay in presenting this case to the grand jury, the choice of biased, pro-police "experts," the multiple deficiencies in the so-called expert reports detailed above, and the irregularity of presenting experts to a grand jury on the ultimate issue are all a remarkable departure from standard grand jury practice. That your office purports to utilize these proposed opinions is especially troubling. Experts who ignore the culture of excessive force and misconduct that pervades this division; who fail to properly credit the video evidence; and who pretend that Loehmann is a model police officer when there is a documented record that he is incompetent, emotionally unstable, immature, and dishonest, are not objective. Your reliance on them is horribly misplaced and terribly disappointing, particularly because, of all the police shootings that have plagued this country in recent years, this case stands out as unique because it involved the homicide of a 12-year-old child.

Unfortunately, in light of the way your office has handled this investigation to date, particularly the release of these improper, biased reports, the Rice family no longer believes your office is discharging its duty in a way that justice and accountability will be achieved. After you give the grand jury the biased "expert" reports produced at your office's direction (which advocate against indictment), it is apparent that you will not follow the prosecutorial custom of requesting the grand jury to bring a true bill of indictment. Even if you made such a request, the presentation would be self-contradictory and confusing and would be unlikely to result in an indictment. [4]

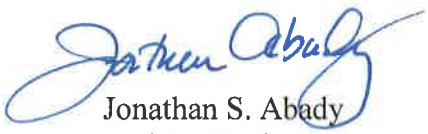
There is a long history in this country of prosecutors failing to fairly investigate and prosecute allegations of police misconduct. The close institutional alliance between police and prosecutors appears to thwart what should be objective and impartial inquiries. Recognition of this problem recently led the Attorney General of New York to move for independent investigations of all fatal police shootings in his state, and has lead others across the nation to insist on independent investigations in these matters.

We respectfully request that you recuse yourself from this case and that a special prosecutor be appointed to investigate and prosecute this matter, including presentation of the proper evidence to a grand jury. That is the only way that Tamir's family, the community in Cleveland, and the nation as a whole will have any faith in this process.

[4] Should, by some miracle, the grand jury indict despite your efforts, we fail to see how your office could prosecute the case without conflict given that the defense will wave around the defense-oriented expert reports that your office procured.

Should you, as we expect, refuse to appoint a special prosecutor, at least end the pretense and publicly state your position about whether probable cause exists in this case, and whether you will seek an indictment—just as you would in any other murder case.

Sincerely,



Jonathan S. Abady
Earl S. Ward
Zoe Salzman

c: Subodh Chandra (via email)
William Mills (via email)
Matthew Meyer, Assistant Prosecuting Attorney (via email)
James Gutierrez, Assistant Prosecuting Attorney (via email)

Exhibit 2

RICHARD D. EMERY
ANDREW G. CELLI, JR.
MATTHEW D. BRINCKERHOFF
JONATHAN S. ABADY
EARL S. WARD
ILANN M. MAAZEL
HAL R. LIEBERMAN
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O. ANDREW F. WILSON
ELIZABETH S. SAYLOR
DEBRA L. GREENBERGER
ZOE SALZMAN
SAM SHAPIRO
ALISON FRICK
DAVID LEBOWITZ
HAYLEY HOROWITZ
THEODOR O. OXHOLM
ALANNA SMALL

EMERY CELLI BRINCKERHOFF & ABADY LLP

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TELEPHONE
(212) 763-5000
FACSIMILE
(212) 763-5001
WEB ADDRESS
www.ecbalaw.com

CHARLES J. OGLETREE, JR.
DIANE L. HOUK

November 16, 2015

Via Electronic Mail and Federal Express

Timothy McGinty
Cuyahoga County Prosecutor's Office
The Justice Center, Courts Tower
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113

Re: Continued Subversion of the Grand Jury Process

Dear Mr. McGinty:

As you know, this firm, together with The Chandra Law Firm LLC and FirmEquity, represent Samaria Rice, her daughter, T.R., and the Estate of Tamir Rice. We are compelled to write to you for the third time in less than a month because of your continued subversion of the grand jury process through the serial release to the public and proposed presentation to the grand jury of pro-police "expert" reports that purport to exonerate Officers Loehmann and Garmback. Late last week, you released yet another report by a former Florida police officer named Ken Katsaris.

Like your first two supposed "experts" Kimberly Crawford and Lamar Sims (who were thoroughly discredited by Ms. Rice's representatives, independent legal experts, and the media), Katsaris is not credible. Multiple courts have rejected him as an expert witness. Just like Sims and Crawford, Katsaris relies on the same improper speculations that infected the last two reports. Like Sims and Crawford, Katsaris rubber stamps the officers' blatantly improper tactics. But in an even more remarkable maneuver, Katsarsis takes the egregious step of actually blaming the victim in ways that are plainly refuted by the video evidence. It is difficult to imagine anything more offensive than Katsaris' conclusion, which equates the "tragedy" of "the possibility of loss of career" for Loehmann and Garmback with the "tragic loss of life" of Tamir Rice. To release such a report, just ten days before the anniversary of Tamir's death, shocks the conscience. It is clear you need to step down and let an independent special prosecutor take over this case.

Katsaris' Attempts to Blame the Victim Are Refuted by the Video

Katsaris repeatedly blames the victim Tamir Rice in his crusade to exonerate the police offers who killed this 12 year-old child. All of these attempts are refuted by the video evidence.

For example:

- Katsaris states that there was "movement of Rice towards Loehmann" (p.7) —but the video is clear that *it was the officers who drove up to Tamir* and, within just 1.7 seconds, jumped out and shot him. Katsaris' suggestion that the officers were stationary and Tamir threatened them by moving towards them is utterly false.

- Katsaris claims Tamir was "*possibly* not reacting to Loehmann's commands" (p. 7)—but the video is clear that there was no time for the officers to issue any commands, much less for Tamir to react or respond to such commands had any been given. It bears noting that speculative testimony of this sort is prohibited as an evidentiary matter in any legal proceeding, whether in a grand jury or at trial. Why your office believes an expert opinion based on something the reporter thinks "possibly" happened could be relevant or anything other than a misleading distraction to the grand jury is a mystery to us and to independent observers.

- Katsaris asserts that Tamir had "notice of the police presence" (p. 10)—but the video shows they drove up and immediately shot him within 1.7 seconds, so in fact he had no notice at all. Again, the suggestion by Katsaris that he knows what was in the child's mind before he was shot is, under the circumstances, preposterous.

- Initially, Katsaris acknowledges the video "is not . . . clear" as to whether Tamir is "reaching for his waist" when the officers drive up (p.7). But, in his determination to blame Tamir for his own death, Katsaris later treats it as a certainty that Tamir was reaching for his waist, claiming for example that the video "shows Rice's movement toward the waist," "the actions of Tamir Rice lifting his jacket and reaching for his waist," "especially the hand movements, and the movements towards the waist." (p. 9). This and other strained manipulations of the facts demonstrate an "expert" who, far from being neutral and objective, is determined to support the officers.

- Katsaris says "Rice was warned by the owner of the replica gun that the 'orange tip' identifying the gun as a replica firearm had been removed and that the gun really 'looks real'" (p. 10-11)—but the video shows Tamir wasn't holding the toy gun when the officers drove up, so they had no time to see the gun, much less that it didn't have an orange tip, before they shot Tamir. So, Katsaris' musing about how real the gun looked is totally irrelevant, except to suggest it was Tamir's fault.

Just Like the Other Reports, Katsaris' Report Relies on Pure Speculation

Neither Loehmann nor Garmback have given any sworn testimony or statements about the shooting of Tamir Rice. Yet Katsaris, just like the last two "experts" you retained, repeatedly speculates about what the officers might have seen or believed.

For example, Katsaris claims that Tamir's "presence in the gazebo was not expected, causing Officer Garmback to apply the brakes suddenly" and concludes therefore that the "vehicle stop position was not by choice, but by necessity." (p. 8). Again, this is nothing but speculation, because:

- The officers have never testified that it was "not expected" to see Tamir in the gazebo. Katsaris' claim is pure supposition.

- In fact, the swings (where the 911 caller had reported seeing Tamir) are located in an area where one would reach before arriving at the gazebo; the officers drove by the swings first, then continued on to the gazebo. The logical inference about their actions is that they continued past the swings to continue to look for Tamir and they then found him just a few feet further along, at the gazebo—hardly surprising or unexpected.

- The Highway Patrol report actually concludes that Garmback began braking and decelerating *40 to 75 feet away* from where the car ultimately came to a stop in front of Tamir (p. 43), which suggests they had plenty of other options to stop elsewhere or drive the car somewhere else.

Katsaris Rubber Stamps the Officers' Tactics

Crawford and Sims were widely criticized for not questioning the officers' tactics that led to them parking their car right in front of Tamir and jumping out and shooting him within 1.7 seconds. Katsaris' report is deficient in the same way.

- Katsaris assumes, without any basis, that the officers had no choice but to stop their car right next to Tamir (p. 8). But, as set forth immediately above, the evidence actually suggests that is not true: they had plenty of time and space to stop earlier, to direct their car elsewhere, or to keep driving after they saw Tamir until they were at a safe distance.

- Katsaris concludes that Loehmann's actions were reasonable because of "the potential threat from possible gunfire at the officers." (p. 8). But if there really was a threat of gunfire, it obviously would have been safer to drive away than to do what Loehmann did: get out of the car, without any cover, at close proximity to Tamir, and immediately begin shooting. Here again, Katsaris' claims about what happened here are totally inconsistent with any reasonable interpretation of proper policing.

- Katsaris simply ignores the fact that there was no immediate threat requiring Loehmann to shoot—Tamir was not even holding the toy gun, much less pointing it at anyone or otherwise threatening anyone, and no one had reported Tamir had, moments earlier, discharged a gun. He was alone by himself in the gazebo.

Katsaris is a Discredited Expert

In addition to the many flaws in Katsaris' report, as laid out above, Katsaris himself is not a credible expert witness. Multiple courts throughout the country have disqualified him and prohibited from testifying. *See, e.g.*, *Rosado v. Deters*, 5 F.3d 119, 124 (5th Cir. 1993) (disqualifying Katsaris from opining on whether a police officer had backed up his car or not because he had no "scientific, technical, or other specialized knowledge in the area of accident reconstruction"); *Bruner-McMahon v. Sedgwick Cnty. Bd. of Comm'rs*, No. 10-CV-1064-KHV, 2012 WL 33837, at *5 (D. Kan. Jan. 6, 2012) (refusing to allow Katsaris to testify because he offered legal conclusions that "would usurp the jury's role" and because he sought to testify on matters "outside his field of expertise"); *Owens v. City of Fort Lauderdale*, 174 F. Supp. 2d 1298, 1311 & n. 3 (S.D. Fl. 2001) (criticizing Katsaris' opinion as "rife" with improper "conclusory statements" and "legal conclusions"); *Taylor v. Watters*, 655 F. Supp. 801, 805 (E.D. Mich. 1987) (finding Katsaris had exaggerated his qualifications and experience, concluding that "Katsaris is held not to be an expert witness as a matter of law.").

It is particularly significant that at least two courts have prevented Katsaris from giving legal conclusions that attempt to usurp the role of the jury. *See Bruner-McMahon*, 2012 WL 33837, at *5; *Owens*, 174 F. Supp. 2d at 1311 & n. 3. It is similarly improper for you to have Katsaris (and your other purported experts) testify to the grand jury about the ultimate legal issue in this case: whether the officers' use of force was objectively unreasonable.

In fact, your apparent insistence on using these discredited reports creates an extraordinarily awkward and untenable situation. How can you present such flawed testimony and not vigorously cross examine these individuals as to the many defects underlying their findings? If you were to present any of these three purported "experts" without such cross examination, you would be misleading the grand jury and abandoning your obligation to provide a fair and impartial presentation. Accordingly, if you persist in this ill-advised direction, please confirm that your office will engage in proper cross examination of the experts you have chosen to present.

Conclusion

In stark contrast to your office's nearly year-long attempt to exonerate the officers who killed Tamir Rice, earlier this month, the officers who shot and killed 6-year-old Jeremy Mardis were arrested and charged with second-degree murder just 72 hours later.[1] Just like in this case, there was video footage of Jeremy's shooting, which the prosecutor relied on in reaching his decision to charge the officers. Unlike your office in this case, the prosecutor in the Mardis case did not spend nearly a year trying to find "experts" who would exonerate the officers in the face of a damning video. It is impossible to ignore the different treatment your office has given to Tamir Rice or the fact that, while Jeremy was white, Tamir was African American.

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[1] http://www.theatlantic.com/national/archive/2015/11/the-death-of-jeremy-mardis-and-trustworthy-police/415437/; http://www.nydailynews.com/news/national/king-justice-isn-swift-black-police-shooting-victims-article-1.2429899.

Although you insist your improvident disclosure to the media of these "expert reports" is done in the name of transparency, the true impact of your conduct is to demonstrate a naked and unconscionable bias in favor of police officers who are responsible for the death of a 12-year-old boy. Apart from the way this activity imperils the operation of the grand jury process, it also raises independent concerns about compliance with the law on grand jury secrecy and the rules of professional conduct. *See* Ohio Crim. R. 6(E) (stating that "Deliberations of the grand jury . . . shall not be disclosed" and providing that a "prosecuting attorney . . . may disclose matters occurring before the grand jury . . . *only when directed by the court*"); Ohio Rule of Professional Conduct 3.6(a) (lawyers are prohibited from making "an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding. . .").

On behalf of Tamir's mother and sister, for all the reasons set forth in this letter and our two prior letters of October 16 and November 9, we are profoundly disappointed by your office's approach to this case. If you had decided not to present the case to the grand jury because you did not think there was sufficient evidence of a crime, we would have been disappointed by your decision but we would have respected your candor. Instead, you have taken a duplicitous approach of pretending to present the case to the grand jury, while simultaneously commissioning these exonerating "expert" reports that we would have expected from the officers' defense attorneys, not from an impartial prosecutor. You appear determined to use these invalid opinions to try to convince the grand jury not to indict, and then hide behind the grand jury's decision. This approach is unprofessional, highly misleading, and, for this family grieving the loss of their son and brother, incredibly demoralizing.

As of the date of this writing, you have not responded to our October 16 and November 9 letters. That lack of response is further evidence of your office's unprofessional approach to this case and complete lack of respect for the victim's family. We request that you respond in writing to all of our letters by November 20 with a point-by-point, substantive reply.

In addition, we renew our call that you step aside and let an independent special prosecutor take over this case. Your handling of this case no longer has any credibility.

Sincerely,

Jonathan S. Abady
Earl S. Ward
Zoe Salzman

c: Subodh Chandra (*via email*)
William Mills (*via email*)
Matthew Meyer, Assistant Prosecuting Attorney
James Gutierrez, Assistant Prosecuting Attorney

Exhibit 3

RICHARD D. EMERY
ANDREW G. CELLI, JR.
MATTHEW D. BRINCKERHOFF
JONATHAN S. ABADY
EARL S. WARD
ILANN M. MAAZEL
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ELIZABETH S. SAYLOR
DEBRA L. GREENBERGER
ZOE SALZMAN
SAM SHAPIRO
ALISON FRICK
DAVID LEBOWITZ
HAYLEY HOROWITZ
THEODOR O. OXHOLM
ALANNA SMALL

EMERY CELLI BRINCKERHOFF & ABADY LLP

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TELEPHONE
(212) 763-5000
FACSIMILE
(212) 763-5001
WEB ADDRESS
www.ecbalaw.com

CHARLES J. OGLETREE, JR.
DIANE L. HOUK

November 9, 2015

Via Federal Express and Electronic Mail

Timothy McGinty
Cuyahoga County Prosecutor's Office
The Justice Center, Courts Tower
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113

Re: Improper Public Comments During Convening of the Grand Jury

Dear Mr. McGinty:

As you know, this firm, together with The Chandra Law Firm LLC and FirmEquity, represent Samaria Rice, her daughter, T.R., and the Estate of Tamir Rice. We write to express our profound disappointment and strong objection to your recent public comments while the grand jury is convening to consider charges in a case that is of immense importance not only to our clients, but to the Cleveland community and the nation as a whole. Those comments include assertions that are demonstrably false and that illustrate a disturbing lack of professionalism and impartiality on your part. This conduct provides further evidence that the grand jury process is being seriously compromised and that your office must recuse itself and have an independent prosecutor appointed to ensure the fair administration of justice.

Just last month, on October 14th, we wrote to you to express our strong disappointment and concern over the decision by your office to take the highly irregular step of releasing to the media two supposed "expert reports" that you apparently intend to present to the grand jury. You released these reports to the media at 8:00 p.m. on a Saturday night over a holiday weekend, refusing to tell us who had authored them, what they said, and when exactly you were going to disclose them. Among other things, your decision to proceed in that fashion prevented us from pointing out the many flaws in those reports and reasons why it was totally inappropriate to present them to the grand jury. As we pointed out in our October 14th letter, the presentation at the grand jury stage of expert testimony on the ultimate issue (whether the police acted unreasonably) is highly anomalous, if not unprecedented.[1] Moreover, it took your office

[1] *See, e.g.*, Opinion of Professor Jonathan Witmer-Rich of the Cleveland-Marshall College of Law, *available*

almost a year to find alleged experts who would be willing to assert that the obviously precipitous shooting death of a 12-year-old child under the circumstances of this case was "reasonable" and "constitutionally justified." Such an interpretation of "reasonableness" distorts the meaning of that concept beyond recognition and mangles any fair construction of constitutional principles.

When the identity of the two alleged experts was exposed, it became clear that their views were utterly biased and meritless. As your office surely knew, one of the experts, Kimberly Crawford, had her views rejected and discredited by the federal government as being excessively biased in favor of the police in another high-profile case. The other expert, S. Lamar Sims, made public comments before you retained him that showed he had already formed an opinion about the killing of a 12-year-old child (Tamir Rice) that was also biased in favor of the police. An examination of the reports themselves demonstrates how illegitimate they are, assuming facts not in evidence (*i.e.*, purely speculative testimony from the officers about hypothetical excuses for the killing of Tamir) while ignoring other critical evidence unfavorable to the police (*e.g.*, that Officer Loehmann shot Tamir immediately and both he and his fellow officer left the boy bleeding and dying on the ground without administering first aid). Under the circumstances, the suggestion that these experts were neutral and independent is meritless.

We are also disturbed by what appears to us to be a selective, confused, and contradictory use of grand jury secrecy and disclosure practices. On the one hand, your office enjoys the protection afforded by the general secrecy of grand jury proceedings. On the other hand, certain activity of the grand jury has been leaked to the press[2] and you have chosen to selectively release other information, most notably the biased and discredited "expert" reports referenced above. We are concerned that your decision to release those reports—which attempt however unpersuasively to exonerate the police—could have the effect of tainting the grand jury or improperly influencing their deliberations.

Samaria Rice has an obvious, legitimate, and indisputable right to seek accountability and justice for the senseless and unjustified shooting of her 12-year-old child. As her counsel, we have a clear professional obligation to register our objections to what she and we perceive to be questionable practices in your office's handling of the grand jury process. When asked in public at the November 5 political event about the issues Ms. Rice and we raised, you took the astonishing step of impugning the motives of both Ms. Rice and her representatives. Captured on video, you said, "Well isn't that interesting. They waited until they didn't like the reports they received. They're, they're very interesting people. Let me just leave it at that. And they have their own economic motives." (You then cut off and berated a woman in the audience who protested that it was unfair for you to say that.) With your statement, you suggested that Ms. Rice and her counsel waited to see what the experts would say and only then chose to criticize the process, implying we had somehow endorsed your irregular decision to present "expert testimony" of this type to the grand jury. That is false and your office knows it. We

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at http://www.cleveland.com/opinion/index.ssf/2015/10/tamir_rice_case_should_go_to_a.html (the question of the officers' guilt is a jury question, not one that "experts" can decide).

[2] Curiously, at a November 5th political event, you admitted to knowing the source of leaked information but refused to disclose it, even though disclosure of grand jury information can constitute a criminal act.

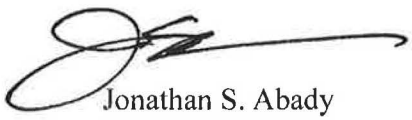
have no control over what evidence you present to the grand jury and certainly did not endorse or influence in any way what your office is doing in this regard.

Your public comments impugning the integrity of Ms. Rice and her representatives have now resulted in a situation where your office has not only made a decision to present biased and discredited "expert" testimony to the grand jury, but you are now taking the remarkable tact of attacking the motives of a grieving crime victim and her attorneys who are attempting to secure justice for her and her family. Your office's handling of this matter has now raised an unmistakable appearance of bias and impropriety. Regrettably, under these circumstances, we are compelled to renew our request that your office recuse itself and that an independent prosecutor be appointed.

If you continue to refuse recusal, you have now publicly confirmed that it is the normal practice to make a recommendation to the grand jury on whether to indict or not after the evidence has been presented and before a vote is taken, and that you will not deviate from that standard practice in this important case. Although it is difficult to imagine how you could now seek an indictment on criminal charges after presenting and repeatedly personally vouching for discredited and biased "expert" testimony suggesting the shooting of Tamir Rice was reasonable, you are obligated to disclose what your recommendation to the grand jury will be before you make it. We—and an obviously interested public—await your disclosure on that subject should you not recuse.

As of the date of this writing, you have not responded to our October 14 letter. We request that you respond in writing to that letter as well as to this one by November 11 with a point-by-point, substantive reply.

Sincerely,



Jonathan S. Abady
Earl S. Ward
Zoe Salzman

c: Subodh Chandra (*via email*)
William Mills (*via email*)
Matthew Meyer, Assistant Prosecuting Attorney
James Gutierrez, Assistant Prosecuting Attorney