27. When [Diaz] resumed the witness stand, the objection was sustained and instructions were offered to the jury to disregard the testimony regarding how much [Diaz] claim he had been paid. Nevertheless, the intentional tainting of the jury's deliberation had already been done. It merits to mentioned, that at the conclusion of all the evidence the jury deliberated for four days and four nights, and they sent a note to the Court, claiming that they were "dead locked" the Court then, with the consent of all parties declared a mistrial due to the inability of the jury to reach a verdict on any count to the indictment in question.

THE SECOND TRIAL:

28. Prior to jury selection before the second trial prosecutor [Karen] immediately moved to be relieved of his stipulation, and again without one shred of evidence produced that [Grievant] was involved in the distribution of drugs, prosecutor [Karen] argued that he should be permitted to elicit testimony that [Grievant] was involved in the narcotic business. The Court denied the motion, and during his opening statement (which the suppressed evidence reveals was a false representation), prosecutor [Karen] was able to characterize the case without reference to any allegations that [Grievant] was involved in the distribution of narcotics. Indeed, prosecutor [Karen] began his opening statement at the second trial, with the words:

"We are going to show in this trial that the motive was revenge." We are going to show you that Nelson Rodriguez believed that Louie Barrios had intended some bad things to happen to him and so he and his co-defendants carried out all of those acts against Louis Barrios and against two innocent young girls." (T2: 6,7).

29. Meanwhile, prosecutor [Karen] was again seeking to circumvent the ruling of the trial Court, regarding the inadmissible evidence that he [Karen] claimed involved [Grievant] with drugs. During [Karen's] direct examination of Cardona. Herein again, he questioned the witness as follows:

Q. Now what was the nature of the relationship between Mr. Barrios and Rodriguez?

A. They were friends, business partners.

Q. And were they good friends?

A. You can say that.

Q. As of June of 86, was their relationship still strong or close?

A. No they had a fallout. They became enemies.

30. Immediately thereafter, Prosecutor [Karen] elicited from Cardona, that her boyfriend Barrios was a drug dealer. (T2:303) No reference was made to any business dealing by Louis Barrios, other than in the narcotics trade. And, during direct examination of their key witness [Diaz], prosecutor [Karen] again, elicited the following testimony:

Q. What was your relationship to him?

A. To Mr. Rodriguez?

Q. Yes.

A. I rented a loft that was in one of the theaters as a gym.

Q. Did you have any other business connection to him?

A. I was keeping his books.

Q. In all the dealing you had regarding the keeping of his books, did any of his income come

from the boxing profession, either through matchers or promotions or training, are in any way related to boxing?

A. No.

31. [Grievant's] counsel immediately objected and the Court overruled his objection. (T2: 408,409). As a result of this testimony, and rulings of the Court, [Grievant's] counsel felt constrained to cross-examine [Diaz] regarding his narcotics activity, even though [Grievant] and his counsel felt [Diaz] might respond by shifting the narcotics activity to the [Grievant]. As [Grievant's] counsel endeavored to point out to the Court, by the time that [Diaz] was finished testifying on direct examination, it was obvious that the inference was unmistakable that [Grievant] was allegedly a narcotics dealer. (T2: 47). [Grievant's] counsel began his cross-examination of [Diaz] by asking:

Q. Were you in any way ever involved in the narcotics business?

A. Involved in, "I used to keep the books for Nelson."

32. At his earliest opportunity [Grievant's] counsel moved for a mistrial. The application again was denied. (T2: 471). On further cross-examination, counsel learned that [Diaz] never turned one iota of narcotics records involving the [Grievant] over to prosecutor [Karen], his office or, to any other law enforcement authority (T2: 541, 542).

33. Most significant, although [Diaz] claimed to have been the [book keeper] for [Grievant's] alleged narcotics enterprise, he had no knowledge whether the deceased Louis Barrios ever owed

[Grievant] any money. Furthermore, [Diaz] never testified that [Grievant] was involved in narcotics in any way, which would provide a motive for the killing of Louis Barrios (T2: 540).

34. At the conclusion of the Second Trial, after one day deliberation, one of the jurors indicated that the jury was deadlocked; That she was ill as a result of her pregnancy, and that she was unable to continue.

35. A mistrial was declared when, at the request of all parties, the juror was excused from further deliberation and no alternatives were substituted. Shortly thereafter, [Grievant's] counsel spoke to a number of the jurors and learned that the panel was leaning towards acquittal for the [Grievant], and needed only a short deliberation period to make a final conclusion.

36. It merits to be noted; that in view of the flagrant misconduct on record, by prosecutor [Karen], throughout [Grievant's] first two trials, his counsel filed a motion prior to the third trial seeking to preclude an additional retrial of the instant case on Due process grounds. In the alternative, counsel again sought to preclude prosecutor [Karen] from offering unsupported and/or uncorroborated testimony to connect the [Grievant] with alleged narcotics activities (A[9]– 101-165). The Court ruled that [Karen] will not be permitted to bring out on their direct case any evidence that neither defendants were involved in narcotics. (A-184-87).

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9 Citations, of the letter (A), refers to [Grievant's] Appellate Brief, followed by the page number in the Brief.

37. At the Third Trial again, prosecutor [Karen] deliberately disregarded the ruling of the Court and on direct examination of Cardona, he [Karen], over [Grievant's] counsel's objection, continued to lead the witness to assert that [Grievant] and the deceased Barrios were "business associates" who had a falling out over money (A-1952).

38. Although, defense counsel objected to the continuous pattern of the prosecutor [Karen's] misconduct, he continued to transgressed the boundaries of the Court's ruling when he again elicited, over objection, testimony that Barrios was a drug dealer (A-1956); and that the [Grievant] claimed that Barrios owed him "a couple of hundred Thousand dollars"[10] (A-1953). Thereby compelling the jury to infer that [Grievant's] business dealing with Barrios involved the Sale of narcotics.

39. Furthermore, prosecutor [Karen] outright disregard the boundaries of the Court's ruling when it came to questioning [Diaz]. After eliciting testimony that [Diaz], who had not produced a single paper/document that proved [Grievant] either rented a loft/space in one of his Theaters to train professional Boxers or, that he kept any books for the [Grievant]. Yet, he [Karen], was still permitted to elicit the following testimony over [Grievant's] counsel's constant objections:

Q. Were the book or any monies that you handled or kept records of in any way, related to the boxing trade, either in training, promotion, matches or anything having to do with

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[10] **Ironically, it merits to be noted that [Diaz] went from not knowing if [Barrios] had owed [Grievant] any money during the second trial, then at the third trial it was a couple of hundred thousand dollars. The same amount that [Karen] took from [Diaz] as illegal Drug money.**

Boxing?

A. No.

* * * * *

Q. Now, in the course of you keeping the books for Mr. Rodriguez, did you deal at all with cash?

A. Yes.

Q. Mr. Diaz, in approximately the three or four months that you kept the books for Nelson Rodriguez, can you give us a figure as to how much money was accounted for, within your accounting and book keeping?

[Grievant's] Counsel immediately objected and the Court overruled.

A. In the hundred of Thousand of dollars. (A-1317-22).

40. Evidence, that [Grievant] earned large sums of money from a business other then the Sport of boxing was clearly irrelevant to the issue at trial, and was offered for no purpose other than to taint the jury against the [Grievant], having then infer that [Grievant] earned his money from and illegal source - - namely, the narcotic trade. However, though the law is clear, that evidence of prior charged, criminal conduct may not be admitted as part of the People's direct case if it's only purpose is to establish the accuser's propensity to engage in criminal activity. People v. Santarelli, 49 N.Y.2d 241 (1980); People v. Allweiss, 48 N.Y.2d 40 (1979); People v. Condon, 25 N.Y.2d 139 (1970). Inassuch, even if the prosecution could have elicited evidence of prior charged criminal conduct in this case, it merits to be mentioned that [Grievant] never had a prior criminal record nor, ever had a

running in with the law.[11]

41. Thus, there was nothing in this case that would have granted prosecutor [Karen] to brand the [Grievant] as a narcotics dealer never mind introducing it as "background material" to establish any type of relationship between the parties. Most significant, the best proof that prosecutor [Karen] was bend in tainting the jury against the [Grievant] from the outset in this case, is in the suppressed police report itself, which reflects Cardona's statement allegedly made six days after the incident, containing no mention of the fact that [Grievant] was involved in narcotics business with Barrios (A-163-64), nor does the report indicate that the quarrel which led to the death of Barrios resulted from narcotics dealing.

42. Moreover, there is over whelming weight of authority supporting [Grievant's] contentions that allegations of narcotics dealing are so prejudicial as to be inadmissible under the guise of "background material." See People v. Sanders, 128 A.D.2d 480 (1st Dept. 1987); People v. Baez, 103 A.D.2d (2nd Dept. 1984); People v. Turner, 66 A.D.2d 904 (2n Dept. 1978); People v. Philpot, 50 A.D.2d 822 (2d Dept. 1975). Especially, to use it as "background material" in a case where one young woman was shot to death, and the other was critically wounded, without question said allegations of narcotics dealing did in fact prejudice [Grievant's] outcome in this case. This is proven because, at the time the

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[11] **Unlike the People's key witness [Diaz], who was a con criminal, and who had previous running in with the law dating back to Sept. 6, 1977 and June 13, 1979, for obscenities in the 2nd and the 3rd degree.**

shooting occurred, Cardona, who claimed never saw the [Grievant] during the shooting at trial, was still premitted to testify that over a loud Stereo playing at maximum volume, used to muffle the noise of the gunshots, after she sustained a point blank gunshot to the face, she heard the [Grievant] say "now it's your turn" just before the sound of two additional gunshots, humanly impossible. However, the suppressed notes that the lead investigator [Det. Maroney], claimed were taken from Cardona six days after the alleged incident, where at first, during [Grievant's] first trial he denied they existed, differed from her testimony at the third trial regarding the incident, and her voice identification claim, as the notes indicates that she first attributes the words she claimed she heard after the shooting; **"lets make it look like a robbery" and "now is your turn;" to, "they said," then, "Quinones said," or, Louie said, and at trial, the [Grievant] said the words**. In as such, prosecutor [Karen], at the third trial was able to keep the notes from the jury's deliberation depriving the [Grievant] to explore not only the opportunity to test Cardona's recollection of the alleged statements she claimed to have made six days after the incident but also, to prove she was blatantly lying when she claim that she identified the [Grievant] by voice at the time of the shooting, when she admitted to barely knowing the [Grievant], who she claimed to have met briefly, a few times. See; attached the scratch notes taken from Cardona six days after the alleged incident. Exhibit (O).

43. In the instant case, it must be remembered that even with prosecutor [Karen's] intentional misconduct throughout [Grievant's] multiple trials as demonstrate above, couple with his intentional suppression of the incriminating documentary evidence now before this Committee, exposing serious repeated acts of his misconduct throughout the entire process of this case, despite all that, the jury

still had very serious doubts of [Grievant's] guilt. Clearly, it's without question that [Grievant] was intentionally deprived of a fair trial.

44. Nevertheless, with that being said, it merits to be mentioned that this Ethic's Committee should not be surprise of prosecutor [Karen's] unconstitutional and unconscionable misconduct in this case, which should be brought to the attention of all the people residing in the Bronx County Community, as it was Manhattan Federal Court Judge (Denny Chin), who wrote in a July 2001 ruling that freed Jose Morales and Montalvo after 12½ years in prison for a fatal gang attack in a Bronx Park. The Honorable Judge Chin, found that prosecutor [Karen] failed to disclose that the only eyewitness, the victim's girlfriend, had been arrested on cocaine charges before the 1988 trial. The prosecutor remained silent (just as he did throughout [Grievant's] multiple trials) even when the witness testified at trial that she never used cocaine. Judge Chin also found that the District Attorney's office had failed to investigate when another suspect said Montalvo and Morales had nothing to do with the slaying. However, just as the prosecution continues to do in the case at bar, Judge Chin also found that "the prosecution was more intent on protecting a conviction than ensuring that justice was done."[12] In as much, that [Grievant's] case in it's totality is so much more compelling than the Morales and Montalvo case, nevertheless, a trial base on false representation and/or suppressed evidence is no trial at all. Most significantly, false or suppressed evidence can neither convict nor condemn. United States ex rel. Hough v. Mohoney, 247 F.Supp. 767, 779 (W.D. Pa 1965).

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[12] **Jose Morales and Montalvo brought civil actions against prosecutor [Karen] and his office, and they immediately settle on a undisclosed amount.**

D. GRIEVANT'S CONTENTION THAT THE BRONX COUNTY SUPREME COURT LACKED SUBJECT-MATTER JURISDICTION TO TRY CONVICT AND SENTENCE HIM IN THIS CASE IS SUPPORTED BY THE UNDISPUTABLE DOCUMENTARY EVIDENCE ATTACHED TO THIS GRIEVANCE AND AS FULLY DETAILED HERE BELOW IN PARAGRAPHS 41 THRU 77.

45. According to prosecutor [Karen] and his office, [Grievant] was allegedly indicted by a Bronx County Grand Jury on September 2, 1986, under the alleged indictment number 4239/86, for the crimes of Murder in the Second degree [P.L. § 125.25(1) 2-counts]; Murder in the Second degree [P.L. § 125.25(3) 4-counts]; Attempted Murder in the Second degree [P.L. § 110/125.25(1)]; Assault in the First degree [P.L. § 120.10 (4)]; Robbery in the First degree [P.L. § 160.15(1) 3-counts]; Burglary in the First degree [P.L. § 140.30(1)]; Burglary in the First degree [P.L. § 140.30(2)]; and Criminal Possession of a Weapon in the Second degree [P.L. § 265.03, 3-counts]. It was Prosecutor [Karen's] and his office assertion in open Court, throughout [Grievant's] multiple trials, that [Grievant] and three (3) alleged co-indictees acted in concert, to cause the deaths of Luis Barrios and Esther Rodriguez, and attempted to cause the death of Jacqueline Cardona.

46. Nevertheless, it merits to be noted, that prior to the commencing of the first trial in this case, on or about May 5, 1987, in Supreme Court, Part 44, before Justice Elbert Hinkson, submitted the case to the jury, he dismissed ten (10) counts of the twenty count indictment, allegedly had on or about September 2, 1986, dismissed were the counts alleging robbery; Felony Murder; and possession of weapons, the remaining counts were submitted to the jury on June 5, 1987, a mistrial was declared when, after four days of deliberation the jury was unable to reach a verdict on any of the remaining ten (10) counts of the alleged indictment #4239/86.

47. Moreover, after a second mistrial, under the same aforementioned now alleged ten (10) counts indictment #4239/86, a third trial then commenced on or about December 14, 1987, before Justice Fred Eggert. And, at the end of the third trial on or about January 1988, after hearing and all evidence submitted to the jury, in Supreme Court, Part 55, before the aforementioned justice Eggert, the Court announced before submitting the case to the jury, that he was only giving the jury three charges of the remaining ten (10) counts to deliberate, asserting, that he would be reserving his decision on the remaining seven counts until a verdict is rendered. Thereafter, when the jury reached a guilty verdict on all three counts [Murder in the Second degree-2-counts]; Attempt Murder in the Second degree (one count)], the Court then dismissed the remaining seven counts. [Grievant] was then sentenced on January 29, 1988, to consecutive indeterminate Terms of life sentences, for which recent obtain documentary evidence discussed further below establishes that said sentence was not filed with the Court and/or the Bronx County Clerk's Office until February 1, 2007, Twenty (20) years after the [Grievant] was illegally arrested, tried and wrongfully convicted in this case.

48. Most significantly, is the fact that after a close examination of several transcripts belonging to alleged co-indictee Pedro Estrada's subsequent trial, [Grievant] and the late Mrs. Ashirah S. Naphtali-Israel, Esq., for the first time because aware that only one alleged indictment was sought in this entire matter. See; attached Exhibit (P). Contrary to prosecutor [Karen's] protestation in open Court during [Grievant's] pre-trial hearings that two separate indictments were handed down against the [Grievant] and against those named as co-indictees on the cover of both alleged indictments, allegedly had/voted by two separate Bronx County Grand Juries at separate times and dates, September 2,

1986 #4239/86 and January 12, 1987 #145/87. In the instant case, it's prosecutor [Karen's] reply to the Court's inquiries, during Estrada's subsequent trial, "that only one indictment was sought/had in this entire matter, which sheds light as to why the Bronx County, Clerk's office, and the District Attorney's Office, for three (3) years refused to provide the [Grievant] and, the law office of the late Mrs. Naphtali-Israel, Esq., with copies of the aforementioned accusatory instruments #4239/86 and 145/87 in a certified form. Nevertheless, it is the duty of the Court's Clerk, that upon all grand Jury indictments pursuant to CPL § 190.65, when had/voted, a certified copy of said indictment must be filed in the Court having jurisdiction over the panel, and with the office of the County Clerk and upon proper request, a copy of the requested indictment should be made available in a certified form. Here, the repeated request from both [Grievant] and the law office of Mrs. Naphtali-Israel, Esq., who had provided their Clerk's office on several occasions with the proper fee for a duplication and certification of the requested instruments (CPLR § 8019) were totally ignored. In this case, it wasn't until Mrs. Naphtali-Israel, Esq., hired the assistance of Demovsky Lawyers Service Premier Nationwide Document Retrieval, and Process Service Company, D.L.S., Inc., located at: 145 50, Mountain Rd., New City, N.Y. 10956, and after, the [Grievant] filed a civil action against the Bronx County, Clerk's office, that then, both [Grievant] and Attorney Mrs. Naphtali-Israel, were able to obtain the requested documents/instruments in a Certified form. See; attached Exhibits (Q) & (R).

49. Nevertheless, it wasn't until [Grievant] and Attorney Mrs. Naphtali-Israel, obtained the Certified copies of the aforementioned alleged indictments 4239/86 & 145/87, in this case, provided by the above mentioned process Service Company, and learning that alleged indictment 4239/86, was

actually filed with the Court of conviction and the Bronx County Clerk's office on or about January 9, 1990, with the written notation "nunc pro tunc to 9-8-86, couple with what prosecutor [Karen] said during Estrada's subsequent trial, that only one indictment was had in this entire matter, that it became apparent, that prosecutor [Karen] and his office intentionally circumvented [Grievant's] State and Federal Constitutional Right to had had a Grand Jury process in this case. In as such, when reviewing said nunc pro tunc accusatory instrument 4239/86, on it face, it's totally absent of any amendment by way of notation indicating dates & times that various Courts dismissed a total of seventeen counts of the alleged twenty counts indictment #4239/86 in this case. Most significantly, the aforementioned nunc pro tunc accusatory instrument #4239/86, is also absent of the specific acts that each and every individual accused under the acting in concert theory was suppose to have committed. In fact, besides [Grievant's] name being totally absent in the entire body of the alleged accusatory instrument #4239/86, it is also absent of the most important rule in an accusatory instrument: who; where; how and when – rendering the aforementioned alleged had/voted accusatory instrument entirely defective by law.

50. In the instant case, it's without question, that during [Grievant's] pre-trial proceedings prosecutor [Karen] claimed that a multiple twenty (20) count indictment was had/voted by a Bronx Grand Jury, on or about September 2, 1986. However, that assertion is now belied by both Estrada's subsequent trial transcripts and the aforementioned nunc pro tunc accusatory instrument 4239/86, in a certified form. This evidence explain as to why the face of alleged indictment 4239/86, provided by the Bronx County Clerk's office in a certified form, is said to have been filed with their office on

or about January 9, 1990. Which establishes as to why said accusatory instrument is totally absent of any legal notation and/or certification by the multiple trial Courts and their Court Clerks, at the time they were presiding over this matter, attesting to the Court's amended charges, followed by the dates and times each separate trial Court amended the charges that were claimed to have been amended in open Court regarding the aforementioned indictment 4239/86, in this case. Furthermore, a record transcript of both, the initial filing of the aforementioned indictment and it's amended charges resulting in the dismissal of the specific counts by the various Courts is mandated by law, and must be attached to the accusatory instrument in question #4239/86, when filing. Yet, the Courts, the County Clerk's office and, even the D.A's office, is absent of such records.

51. Nevertheless, these major improprieties prompted [Grievant's] Family members, to hire investigator Kevin Joyce's firm, to locate the alleged foreperson Ms. Eastlyn A. Jones, who's named appears on the face of the aforementioned alleged indictment in question (4239/86) as the Grand Jury foreperson. In as such, upon being located and interviewed by Investigator Kevin Joyce, Ms. Eastlyn A. Jones, in two separate occasions, one on May 22, 2008 and the other in June 26, 2008, she provided two written affidavits asserting that she recalls participating in many Grand Jury testimonies, but do not remember participating in any case involving murder or persons being shot in the eye. If there was a murder case, she was on, she would remember the case, words to that effect. See; attached Exhibit (S). This evidence undisputedly establishes that prosecutor [Karen], and his office, lied to the Court and to the [Grievant] when he [Karen], during [Grievant's] initial Court appearance/arraignment on or about September 16, 1986, claimed that a Bronx County Grand Jury

had been impaneled and had voted a True bill on September 2, 1986, indicting the [Grievant] and three others on Twenty (20) counts. Nevertheless, the aforementioned documentary evidence couple with the alleged foreperson's Ms. Eastlyn A. Jones affidavit, now before this Ethics Committee, without question establishes that prosecutor [Karen] and his office intentionally circumvented [Grievant's] State and Federal Constitutional right to had a Grand Jury process in this case.

52. Moreover, another piece of documentary evidence obtained by the law office of the late Mrs. Naphtali-Israel, Esq., contrary to prosecutor [Karen's] and his office aforementioned assertion that the [Grievant] and three other individuals were allegedly indicted by a Bronx Grand Jury on September 2, 1986, is a subpoena submitted to the Court on or about October 1st, 1986, by attorney Joseph Giannini, on behalf of his Client (Alberto Quinones) who he was representing in this case. See; attached Exhibit (T). The subpoena is requesting the production of a death certificate of one Jacqueline Cardona, who the attorney believed had died on August 30, 1986, disputing any doubt that one may have had that an indictment could have been issued and/or voted on or about September 2, 1986. Had the Court and/or the aforementioned attorney known that Ms. Cardona had appeared to testified before a Bronx County Grand Jury on or about September 2, 1986 and/or before, as prosecutor [Karen] alleged in [Grievant's] first Court appearance, then the above mentioned defense attorney's subpoena for the production of the aforementioned death certificate of Ms. Jacqueline Cardona, would have been meaningless and the Court would have then been compelled not only to dismiss the Attorney's subpoena as being frivolous, but also, would have immediately disqualified him as being incompetent to represent his client in a Murder case, when the Court's know that, the first

thing even a First grade Attorney would do on a case upon a Grand Jury voting to indict his client, is to look at the list of the individuals that had appeared to testified before the Grand Jury, which in this case, Jacqueline Cardona's name would have been the primary name on the People's list of witnesses, if in fact, a Grand Jury had been impaneled on September 2, 1986. Nevertheless, this evidence undisputedly establishes that prosecutor [Karen] did not only deprived [Grievant] from receiving a fair trial but also, that at the time [Grievant] stood on trial, and was wrongfully convicted and sentenced to a term of 58⅓ years to life imprisonment, he [Karen], knew he had circumvented and/or deprived the [Grievant] from his right to had had, a Grand Jury process in this case. Establishing, that the Court as described further below, did not have Jurisdiction to preside over [Grievant's] trial. Yet, he [Karen], continued to retried this case. Moreover, [Grievant's] arrest police report does not only reveal that at the time of his arrest on or about August 28, 1986, there was no felony complaint signed and/or filed by the Complainant named in this case, nor, was there an out standing warrant for his arrest when [Grievant] was arrested at Lincoln Hospital, while visiting Alberto Quinones, who was then confined to the hospital as a patient but also, it reveals that there is absolutely no way that a Bronx Grand Jury could have been impaneled to indict the [Grievant] on September 2, 1986 in this case. When, the Court's own calendar undisputedly proves that the [Grievant] had not, as of yet, been arraigned on any Felony complaint in this case. See; attached Exhibit (U). The police department as of August 28, 1986, had not completed any documentary evidence regarding [Grievant's] illegal arrest, and/or had yet, filed said documentary evidence with the Court of arraignment, in this case, indicating that they had been furnished with either [Grievant's] full name, or an accurate physical description of his person on or about September 2, 1986. Inassuch,

a review of prosecutor [Karen's] assertion during alleged co-indictee Pedro Estrada's subsequent trial, sheds further light as to the authenticity of both indictments in this case. When the Court at Estrada's trial asked prosecutor [Karen], which indictment he was referring to, he [Karen], responded "There was only one indictment." Clearly this respond raises the question of authenticity of not one, but, both alleged indictments in this case, #4239/86 and #145/87.

53. Wherefore, Our State Constitution provides that no person may be held to answer for a capital or otherwise infamous crime except on indictment of a Grand Jury (N.Y. Const. Art. I, § 6). Under the inflexible dictates of that provision, New York has codified the procedures for securing an indictment for a felony offense (CPL Art. 200), evidentiary rules governing presentation (CPL § 190 et al.); and the requirements of a jurisdictionally sound indictment (CPL § 200.50[7]). In the instant case, it's this same aforementioned State Constitutional mandated procedure that prosecutor [Karen] intentionally circumvented, and in doing so, he [Karen] and his office, deprived the [Grievant] of his right to be prosecuted only after an indictment.

54. The Law is clear, that upon voting to indict a person, a Grand Jury must file an indictment with the court by which that August body was impaneled. (CPL § 190.65[3]). Since every true bill of an indictment must be filed, the failure to make such filing creates an egregious defect that is not curable. People v. Marine, 142 Misc.2d 449, 537 NYS2d 745 (1989). Therefore, a defendant may not stand properly convicted for which no indictment has been filed. People v. Gonzalez, 151 A.D.2d 601, 542 NYS2d 359 (2d Dept. 1989). CPL § 190.65, contemplates an almost simultaneous vote and filing of

the indictment by the Grand Jury. Hence, on Habeas Corpus Petition, a defendant is entitled to immediate release, in the absence of a prompt filing.

55. Subject-matter jurisdiction is the court's power to decide cases involving the type of offenses with which a defendant is charged. The court only has proper jurisdiction over the subject matter, if, a proper indictment has been voted and filed, pursuant to CPL. § 210.05, "The only methods of prosecuting an offense in a superior court is by an indictment filed therewith by a Grand Jury." (See, People v. Lebron, 182 Misc.2d 640, 701 NYS2d 274 [Statute under which only methods of prosecuting an offense in a superior court information filed therewith by a district attorney, limits trial jurisdiction of superior Courts to offenses charged by grand jury indictment, or by superior court information, and such jurisdiction does not attach until such document are filed with the superior court]. McKinney's CPL. § 210.05; see also, People v. Harper, 37 N.Y.2d 96, 99, where the New York Court of Appeals has ruled that: "a valid and sufficient accusatory instrument is a nonwaivable jurisdictional prerequisite to a criminal prosecution"; People v. McGuire, 5 N.Y.2d 523, 527; People v. Scott, 3 N.Y.2d 148, 152).

56. Moreover, it merits to be noted; that upon voting to indict a person, a grand jury must, through its foreperson or acting foreperson, file an indictment with the court by which the grand jury was impaneled (CPL. § 190.65[3]). Since every true bill of an indictment must be filed, lack of filing creates an egregious defect that is not curable. People v. Marine, 142 Misc.2d 449, 537 NYS2d 745. The only method of prosecuting an offense in a superior court is by an indictment filed therewith by

a grand jury, or by a superior court information filed therewith by a district attorney. CPL. § 210.05; see also, People v. Perez, 189 Misc.2d 516, 743 NYS2d 398, 400-401 (Co. Ct. 2001)("jurisdiction is established in a Court following the filing of a sufficient accusatory instrument").

In as such, a recent telephone conversation between the [Grievant], and one Mr. Michael McCabe, who holds the position of "Supervisor" in the Bronx County Clerk's Office, Room 118, which took place on or about June 22nd, 2011, approximately 11:03 a.m., did not only confirmed that alleged indictment 4239/86, was filed with his Clerk's Office on January 9, 1990 and, that the only "Notice of Entry" papers/documentation (provided on June 11, 2011) on file with his Clerk Office, regarding the sentence filed on both alleged indictments 4239/86 & 145/87, was filed on February 1, 2007, but also, he confirmed, that his County Clerk's Office, is absent of the named and/or identified requested documents from the list that the Demovsky Lawyer Service Premier Nationwide Document Retrieval and Process Service Company, provided him and/or his office with. See; attached Exhibit (V). However, though he promised the [Grievant] and the Law office of Attorney Manuel Aranda, located at 1807 Clinton Ave., Suite 5C, Bronx, New York 10457, that he would provide them with a certified letter or Sworn affidavit attesting to same, as requested by [Grievant] during their telephone conversation, which can be proven through correction's program of recorded phone calls conversations. At the very end, in a letter dated August 17, 2011, that Mr. McCabe, addressed the aforementioned Attorney's office with, he back tracked what he promised and suggest that we contact the Bronx District Attorney's Office. See; attached Exhibits (W). This evidence, further establishes that no Bronx Grand Jury ever voted and/or filed an indictment against the [Grievant] under the charges for which he stood trial before a Bronx Supreme Court. It is beyond dispute that

the judgment of conviction that [Grievant] is presently being held under is "void for want of subject-matter jurisdiction" (see, Maloney v. Rincon, 153 Misc.2d 162, 581 N.Y.S.2d 120, 121 (NY City Civ. Ct. 1992); People ex rel. Carr v. Martin, 286 N.Y. 27, 35 N.E. 636 (1941).

57. The law is clear that after a valid indictment is returned and duly filed, the defendant must be arraigned before a County Court Judge, or a Supreme Court Justice (CPL § 210.10), and the matter is then ready to proceed to trial. Additionally, in the event of an arraignment before a County Judge, before the case can be heard before a Supreme Court, the procedures set forth in CPL § 230.10 must be followed, and an authorized transfer order must be filed. In [Grievant's] case, there is no evidence recording any such transfer. Although Supreme Court has jurisdiction to try any criminal matter, whether that matter be a violation, misdemeanor, or felony, there are rules in place that requires certain procedures before such jurisdiction may be properly exercised (accord, People v. Granello, 53 Misc.2d 357 (Nassau Co. 1967); People v. O'Hara, 19 A.D.2d 688 (3d Dept. 1963). Nevertheless, it appears that this case was brought before the Criminal Court for arraignment purposes, and thereafter transferred to Supreme Court for trial, the record is totally absent of any such transfer. Following the first mistrial, it is believed that the [Grievant] was again brought before Criminal Court, and again transferred to Supreme Court for the commencement of the second trial, which again ended in a mistrial. However, the record is absent of all three transfers and of a valid accusatory instrument with the proper notations of each and every amendment that occurred on each trial. Making the third trial brought before the Supreme Court, without proper authority having been obtained, or sought, nor was there any transfers properly made.

58. When put in perspective, the conduct of these trials, which included the two mistrials before the ultimate conviction, was so infected with improprieties and outright fraud, that [Grievant's] conviction was had in violation of his rights to be prosecuted only after indictment, a fair trial, and to be free from wrongful imprisonment, as guaranteed by both the Federal and State Constitutions. (US Const.Amends. V, VI, VIII & XIV; N.Y. Const. Art. I § 6). Any such trial, when conducted in violation of established rules and practice has been deemed unauthorized and improperly conducted. In consideration of the gross violation of procedural and substantive law, as stated above the judgment of conviction had against the [Grievant] once carefully examined by this Committee, it will be determined that his conviction must be deemed a nullity.

59. In the instant case, the aforementioned undisputable documentary evidence which proves [Grievant's] conviction was had absent of a Grand Jury indictment #4239/86, is further corroborated by the testimony of Detective Maroney, during his cross-examination on the arrest of the [Grievant] when he gave the following testimony:

"Q. Before you asked Mr. Rodriguez his name, did you tell him that you were there to investigate the homicide of Luis Barrios and Esther Rodriguez?

A. No, Sir.

Q. You didn't indicate to him that you were there to investigate the incident of 2319 Camberieng Avenue?

A. No.

Q. You simply asked him his name?

A. That's correct.

Q. After taking him away from the waiting room-

A. I didn't take him away, I asked him to step out, talk to me.

Q. Correct, without announcing your purpose, am I right?

A. That's correct.

Q. Now on August 27th, at the time that conversations took place, Nelson Rodriguez was not under indictment for these crimes, is that correct?

A. Nobody was.

Q. There was no warrant outstanding for Mr. Rodriguez arrest?

A. There was no outstanding warrant for any one."

(A1766-68: see also further testimony A1769-72).

60. Detective Maroney claimed when asked whether he had any information that the [Grievant] would be in the hospital where Maroney allegedly went to arrest Quinones, he stated **"[No] I did not..." (A1765:2025).**

61. Herein-again, had a Grand Jury panel examined the abovementioned evidence couple with [Grievant's] illegal line-up, demonstrated here below, which took place on August 28, 1986, making it absolutely impossible for a Grand Jury to have been impaneled prior to September 2, 1986, it would have revealed what the attorney who was called to witness the line-up contended occurred. That

[Grievant's] constitutional rights were violated during his line-up, because the parties who witnessed the line-up were hiding their identification by wearing white bed sheets covering them from head to toes, looking through two man made eye holes in the sheet, and the only question that the attorney heard that was conveyed to the witnesses by the police officer was "do you recognize anyone in this line-up?" In which, the un-identified witnesses response were yes, number 4, nevertheless, the question "do you recognize anyone," as opposed to the unidentified witnesses at the illegal line-up,[13] did not represent sufficient cause for any Grand Jury to have voted an indictment against the [Grievant] for murder, or any other charges named thereafter. See; attached Exhibit (X). Establishing, a reason why prosecutor [Karen], and his office would circumvent [Grievant's] Constitutional right, to had had a Grand Jury process in this case.

62. Furthermore, when reviewing the alleged Felony Complaint in this case, there is absolutely no doubt that season prosecutor [Karen] knew or should have known that the aforementioned felony Complaint allegedly filed by his lead investigator [Maroney] was in violation of CPL § 100.15(3) and CPL § 100.40(4)(a). Moreover, although the Court's calendar indicates September 16, 1986, as the date [Grievant], is alleged to have been arraigned on the aforementioned felony complaint, automatically dismissing a September 2, 1986, Grand Jury indictment in this case, the Court and the

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[13] **This Exhibit establishes the [Grievant's] contention that the initial line-up was illegal as the police states "Rodriguez was taken to the 48th Pct. And at about 0015 hrs, 8/28/86 he was placed in a line up conducted at the BxTF office. Rodriguez was seated in the #4 position and was identified by witness #1 (Known to this department) as the person known to the witness as Nelson Rodriguez. No witness at either the first, second, or third trial testified to any such identification.**

Bronx County Clerk's office, is totally absent of any certified records indicating that [Grievant] was actually ever arraigned on any Felony Complaint in this case. It's clear after reviewing the Felony Complaint that said "felony complaint" was jurisdictionally defective and should have been known to have been jurisdictionally defective to both the court and the People, rendering the court with lack of subject matter jurisdiction to even arraigned the [Grievant] on said defective felony complaint never mind subjecting him to multiple trials on a absent filing of a felony complaint. See; attached Exhibit (Y). For one, the felony complaint was defective on it's face for the following reasons: (a) the felony complaint accuses the [Grievant] as the primary actor; (b) the felony complaint was not sworn or signed by the alleged complainant; (c) the felony complaint is on the basis of hear-say; (d) the felony complaint is absent of the Justice signature; (e) and, absent of any certification that it was ever filed with the Court or the County clerk's office. Herein-again, prosecutor [Karen] knew or should have known that in order for him and/or his office to proceed with the instant case they would have had to dismiss the defective felony complaint and move to resubmit a new legally sufficient felony complaint pursuant to CPL § 100.40(4)(A), in order to properly arraign the [Grievant] on a A-1 felony complaint, rendering the prosecution with lack of jurisdiction to submit the allegation set forth in the charges to a grand jury panel. These aforementioned improprieties further establishes [Grievant's] contention that no indictment #4239/86 was had by a Bronx Grand Jury on or about September 2, 1986, as prosecutor [Karen] first asserted during [Grievant's] Pre-Trial hearings in this case.

63. In the instant case, the above mentioned improprieties couple with the suppressed evidence now

before this Committee, is further evidence of prosecutor [Karen's] intentional fraud upon the Court, defense and the jury in this case, as the [Grievant] directs this Committee's attention to the certified nunc pro tunc accusatory instrument provided by the Bronx County Clerk's Office, certified to have been filed January 9th, 1990, where [Diaz's] name appears in said document caption. These improprieties demonstrate that the prosecutor engaged in two separate acts of fraud with regards to the process of the aforementioned alleged indictment: (1) a illegitimate agreement to allowed [Diaz] to plead to a Superior Court information if in fact, he was already under indictment for 4239/86; (2) it was not only a criminal act to have allowed [Diaz] and Cardona to give false testimony against the [Grievant] throughout multiple trials in this case, but also, it was illegal to have allowed them to testify period, when the Certification of the aforementioned alleged indictment #4239/86 is certified to have been filed/had on January 9th, 1990. Four (4) years after the [Grievant] was held to stand trial, was wrongfully convicted and sentenced to 58 ⅓ years to life imprisonment, violating the very rules in place that requires certain procedures before such jurisdiction may be properly exercised in a Court of Law.

64. Furthermore, the record also shows more serious improprieties contrary to the above mentioned documentary evidence, indicating that [Diaz] on March 16th, 1987 was allegedly indicted by a Bronx County Grand Jury and charged with the crime of Manslaughter in the Second degree, and thereafter, [Diaz] was arraigned before the Honorable E. Hinkson, See; attached Exhibit (Z). Nevertheless, the suppressed evidence attached hereto in support of this Grievance, also shows that [Diaz] on the same day that a Bronx County Grand Jury supposedly had indicted him on Manslaughter Second degree

charges, [Diaz] in the presence of his counsel Flamhalf, and ADA [Karen] before the same aforementioned presiding Justice, who presumably had sentenced him on Grand Jury manslaughter indictment as stated above, waived his right to be indicted by a Bronx Grand Jury and consented to be prosecuted by a Superior Court Information, see; attached Exhibit (E). Pleading guilty to Manslaughter in the Second degree the same charge a Bronx County Grand Jury had presumably charged him with. These improprieties do not only demonstrates that [Diaz's] prosecution by way of SCI was improper and illegal, it also lends further support to [Grievant's] contention that the District Attorney's office "intentionally" engaged in considerable wrong doing throughout this entire case. Moreover, when reviewing the SCI number 1515-87, written on the top of the suppressed bail bond receipt, this evidence (see, attached exhibit [F]), indicates that [Diaz] was released on ROR under the SCI number 1515/87 on December 4th, 1986, and not under any $500,000.00 bail bond on alleged indictment #4239-86, as alleged by trial prosecutor [Karen]. The aforementioned documentary evidence proves that [Diaz] had been held on those very same charges (SCI) since September 15, 1986. The fictitious records generated under calendar number 4239-86, was solely done for the purpose to cover up all the illegalities committed in this case, by the Bronx D.A.'s office, and their trial prosecutor [Karen], who's atrocious and unreprehensible misconduct undermined the entire case from its inception.

65. The New York Constitution provides that a person held for the action of a Grand Jury, upon a charge other than one punishable by death or life imprisonment, may, with the consent of the District Attorney, waive indictment and consent to be prosecuted by Superior Court Information. (N.Y.

Const. Art. I § 6). Criminal Procedure Law further defines that Constitutional provision by specifying that a defendant may waive indictment and consent to be prosecuted by Superior Court Information [SCI], when (1) a local criminal court has held the defendant for the action of a Grand Jury; (2) the defendant is not charged with a Class A felony offense; and (3) the District Attorney consents to the waiver (CPL § 195.10). Yet, had [Diaz] been charged with a Class A-1 felony offense, as prosecutor [Karen] first asserted during [Grievant's] pre-trial hearings, no Court under the abovementioned Criminal Procedure Law would've had the authority to allowed him to waive said charges and plea to Superior Court Information in this case. This evidence sheds light as to why prosecutor [Karen] and his office, traveled to the length they did to concealed and/or cover up the aforementioned fictitious records in this case.

66. In further evidence of the major improprieties surrounding this prosecution, [Grievant] again, directs this Committee's attention to the caption of the certified nunc pro tunc indictment in question, provided by the Bronx County Clerk's Office. On the caption of said document are four names, one of which is the prosecutor's primary witness [Louis Diaz], who supposedly was indicted with [Grievant] and the other two named co-indictees in this case, allegedly on September 2, 1986. Despite the appearance of [Diaz] on the face of indictment #4239/86, the suppressed evidence demonstrates that [Diaz] was subjected to a SCI prosecution some six (6) months after prosecutor [Karen] claimed an indictment was had and/or returned in this case. This prosecution by way of the aforementioned improprieties was improper and illegal, and, an intentional fraud upon the People of the State of New York, the [Grievant] and the presiding jury.

67. Although the prosecution in a recent response to [Grievant's] 440.10 motion, argued that the illegality of [Diaz's] plea agreement did not have an injurious effect on [Grievant's] conviction. Nevertheless, what they leave absent is the fact that the suppression of these illegalities resulted in improper procedures that undermined the entire case from its inception. There is a spill-over prejudicial effect that resulted from the prosecutor's actions, and the resultant cover-up of those improper actions when considered, did in fact have an injurious effect on [Grievant's] conviction.

68. These aforementioned improprieties brought to this Committee's attention did not only deprived the [Grievant] of a fair trial and, from a sound Jurisdictional trial Court, but also, it exposes the intentional fraud committed in this case, which undermines the integrity of the entire Bronx D.A.'s office and, their trial prosecutor [Allen P.W. Karen], throughout the prosecution of this case. For example:

1. Contrary to prosecutor [Karen's] above mentioned assertion that [Grievant], [Diaz], and the other two named alleged co-indictee's in this case, were indicted by a Bronx Grand Jury on September 2, 1986, is the aforementioned suppressed documentary evidence, which indicates that [Diaz] was indicted for the crime of Manslaughter in the Second Degree, by a Bronx County Grand Jury on March 16, 1987;

2. Contrary to [Diaz's] aforementioned grand jury indictment on manslaughter, on March 16, 1987, is the aforementioned suppressed documentary evidence, that [Diaz] entered a plea of guilty to an SCI, on the same manslaughter charge that a Bronx Grand Jury is said to have indicted him on;

3. Contrary to prosecutor [Karen's] and his key witness [Diaz's] testimony that he was out on

$500,000 bail, with no cooperation, is the aforementioned suppressed documentary evidence, which indicates [Diaz] was released on a fabricated $200,000.00 bail bond receipt, under SCI Number 1515-87, on December 4, 1986, establishing that he had been held on those charges since November 20, 1986; and,

4. All of the referenced attached Exhibits, in support of this Grievance, along with the whole of the suppressed documentary evidence and information intentionally withheld during [Grievant's] multiple trials, demonstrates that the above mentioned improprieties are clearly fictitious and were generated solely to establish a record that was non-existent, in that Diaz had actually been held on those very same charges since September 15, 1986, which belies his entire testimony right from the out set when he claim that he was out on 500,000 dollar bail without cooperation, and only began cooperating on or about January 12, 1987, because [Grievant] refused to exonerate him.

69. The law is clear on the procedures to be followed in prosecutions pursuant to Superior Court Information. The language of CPL ' 195.10[1], is mandatory, and the provisions therein cannot be ignored or circumvented through operation of the prosecutor, or the court. Here, regardless as to whichever documents relied upon, the SCI charges are the very same charges alleged in the nunc pro tunc indictment, [T]he defendant, acting in concert with others, on or about June 15, 1986, in the County of the Bronx, did recklessly cause the death of Esther Rodriguez by shooting her with a loaded pistol. As charged in the nunc pro tunc accusatory instrument provided by the Bronx County Clerk's Office, [Diaz] was charged under counts: SECOND, with that particular shooting under the theory of intentional murder (Attached Exhibit(Q p.2)); FOURTH, that her death was charged under

the theory of Felony Murder (Attached Exhibit(Q p.3)); and, SIXTH, that her death was charged under the theory of Felony Murder (Attached Exhibit(Q p.4)).

70. In the instant case, because the law is also clear, that once an indictment is returned charging a class A-1 felony offense, the person charged with such offense cannot thereafter waive such indictment and consent to prosecution by way of SCI, (N.Y. Const. Art. I, § 6; CPL § 195.10[1]; People v Johnson, 187 A.D.2d 990 (4th Dept. 1992)). Under these mandatory provisions, [Diaz's] prosecution is rendered jurisdictionally defective, and it is apparent that prosecutor [Karen] and his office took considerable steps to cover-up those infirmities, all to the prejudice of this [Grievant].

71. Moreover, because of these improprieties, intentional fraud and the absence of a had/filing indictment in this case, the trial court lacked both subject matter and personal jurisdiction, and the judgment of conviction had against the [Grievant] must now be deemed by this Committee a nullity.

72. In the instant case, it is clear after reviewing all the aforementioned improprieties and the whole of the suppressed evidence, it is revealed that the intentional fraud committed by the trial prosecutor [Karen] in this case, gives further reason why Diaz [and] prosecutor [Karen] concocted the story that [Diaz's] life had been threatened and that the [Grievant] had taken out a half a million-dollar contract out on him. In order for prosecutor [Karen] to successfully have the Court secure the records under seal, in hope that the fraud and the travesty of injustice committed against the [Grievant] would never be revealed. (See, Attached Exhibit (Z1), [Diaz's] alleged pleading minutes, pp. 7-8).

73. Additionally, it merits to be noted; that it took the [Grievant] three years, to be provided with a record certification by Assistant District Attorney M. Morales, of the Bronx County, Records Access Officer, to clearly establish that the Bronx District Attorney's Office, is absent of any such records that a Bronx Grand Jury indictment was ever executed against the [Grievant] on September 2nd, 1986, in this case. See, attached exhibit (Z2).[14]

74. It is further contended that the suppressed evidence now before this Ethic's Committee, demonstrates that the [Grievant] is factually, as well as legally innocent, and that the presumption of innocence he was cloaked with under the law of the State of New York was not overcome beyond a reasonable doubt, as he was grossly and intentionally deprived of a grand jury process and a fair trial, in violation of due process and equal protection of the laws of the State of New York. Moreover, if it was not for trial prosecutor [Karen] and his office gross and intentional misconductuct in the case, the outcome of either a Grand Jury process if had, and, of [Grievant's] first trial in this case, would have been entirely different.

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[14] It merits to be noted; that the aforementioned improprieties leave no speculation as to why the Bronx County Clerk's Office intentionally for three years ignored the [Grievant's] multiple requests to be provided with certified copies of both alleged indictments #4239/86 and #145/87, and only after attorney Ashirah Naphtail became involved and hired the assistance of Demovsky Lawyers Service, that the [Grievant] was able to obtain a copy of said indictments in a certified form.

75. Inassuch, upon this Committee in considering if in fact by way of the suppressed evidence, [Grievant] was deprived of a fair trial and, of a Grand Jury Proceeding, [Grievant] respectfully plea's, for this Committee not to over look prosecutor [Karen's] gross and intentional misconduct throughout [Grievant's] multiple trials, as the aforementioned suppressed documentary evidence, demonstrates that he aided and abetted in a huge fraud upon the Court, the People of the state of New York, the [Grievant], and the multiple Juries in this case. His fabrication of evidence, while in collusion with his key witness [Diaz], to laundered his drug money through the means of his office, was in violation of due process and equal protection of the laws of the State of New York, which in no way can continue to be over looked.

76. Nevertheless, the above mentioned improprieties prompted the late Mrs. Naphtali-Israel, Esq., to draw her attention to [Grievant's] sentencing documentation, where she immediately notice major discrepancy with [Grievant's] conviction and pronounced sentence of 58⅓ years to life imprisonment. In as such, upon a close purview of the aforementioned sentencing documentation she then immediately went to the Bronx Courthouse, and to the Bronx County Clerk's office, an examined their Records. She found that their records were totally absent of any such aforementioned sentence (58⅓ years to life imprisonment) ever being filed and/or recorded with their office. In fact, the recent Notice of Entry documentation provided by the Bronx County Clerk's office, on or about June 2011, for this Committee's review unquestionably corroborates the late Mrs. Naphtali-Israel's aforementioned assertion that at the time she personally examined the Court's files, and the Bronx County Clerk's office records/files, no sentence and/or verdict of any kind was ever filed or recorded