

A call to fire Garner cop

Chokehold decried in summation at police hearing

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In a lengthy closing argument Thursday, the attorney prosecuting veteran NYPD cop Daniel Pantaleo at his departmental hearing said he should be fired for using an unauthorized chokehold on Eric Garner that led to his death in 2014.

Suzanne O'Hare, an attorney with the Civilian Complaint Review Board, told an NYPD administrative trial judge that Pantaleo engaged in reckless conduct when he used the banned chokehold, not only causing injury to Garner but triggering an asthma attack as the morbidly obese Staten Island man, 43, resisted arrest.

"He couldn't breathe! God help us, He couldn't breathe," O'Hare exclaimed at the conclusion of her summation to Deputy Commissioner Rosemarie Maldonado, echoing Garner's dying words on July 17, 2014.

It will be up to Maldonado to rule if the CCRB proved its case against Pantaleo and, if so, recommend to NYPD Commissioner James O'Neill a penalty that could include termination.

But because of state confidentiality law, it remained unclear when and how much of a decision would be made public. A Staten Island grand jury declined to indict Pantaleo in 2014.

"The trial is over today, we are going to continue, we are



Eric Garner's mother, Gwen Carr, speaks to reporters after Officer Daniel Pantaleo's departmental trial.

not letting this die," said Gwen Carr, Garner's mother, outside NYPD headquarters, the site of Pantaleo's hearing.

O'Hare's nearly 80-minute summation came after Pantaleo's defense attorney, Stuart London, told Maldonado that Garner's resistance to arrest over an allegation of illegal selling of loose cigarettes triggered fatal cardio-respiratory distress.

"If he didn't resist arrest we wouldn't be here today," London said to Maldonado in his closing argument. "Mr. Garner's heart killed him."

The seven-day administrative hearing stretched over about four weeks with adjournments. Throughout the proceedings, London had argued that Pantaleo didn't use a chokehold but rather a "seat belt" maneuver with his arms around Garner's upper chest, shoulder and neck area.

The city medical examiner found that Garner died from "compression of neck [chokehold], compression of chest and prone positioning during physical restraint by police."

Acute and bronchial asthma, obesity, and heart disease also

contributed to Garner's death, the medical examiner said.

At the time of his death, Garner weighed more than 390 pounds and had a body mass index of almost 51. An index of more than 30 is considered obese. Garner also had high blood pressure.

After an amateur video surfaced showing Garner's struggle with police and Pantaleo's apparent chokehold, his gasping exclamation "I Can't Breathe!" became a signature rallying cry for nationwide protests against police brutality.

The politics of the case, rather

than medical evidence, London argued, became the impetus for the administrative charges against Pantaleo. London also criticized emergency medical technicians for doing what he said was "an unbelievably poor job" in caring for Garner.

The CCRB tried the case at police headquarters, charging Pantaleo under two criminal laws: assault in the third degree and strangulation in the first degree. The CCRB didn't charge Pantaleo with violating police procedure for using the chokehold. The NYPD banned the tactic in the 1990s because of the risk of asphyxiation.

Although CCRB did not charge Pantaleo for using the choke hold, it was an overriding aspect of the case. CCRB attorneys argued through the amateur video, expert testimony, and other witnesses, that Pantaleo clearly used the chokehold as he and other officers struggled to take down Garner in a Staten Island sidewalk. The use of the chokehold, O'Hare argued to Maldonado, was "a gross deviation from the standard of conduct" and hence, reckless.

However, London maintained that the chokehold case was a "joke." He also said Pantaleo didn't have the intent to impede Garner's breathing.

In response, O'Hare argued that the justification defense couldn't be used in an administrative case.

Maldonado gave both sides until June 14 to file additional briefs in the case. The judge told Pantaleo directly that she would look at his entire disciplinary record with the NYPD in determining any penalty if she found him culpable.