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INTRODUCTION

HOLISTIC SUFFERING: FREDDIE GRAY IN CONTEXT

Michael Pinard*

Had Freddie Gray not died in The University of Maryland Medical Center's Shock Trauma Center one week after his infamous encounter with Baltimore police officers, who chased him simply because, according to the Application for Statement of Charges filed by one of the arresting officers, he "fled unprovoked upon noticing police presence,"¹ none of us would know anything about him. Very few of us would know much about Sandtown-Winchester, the neighborhood where Mr. Gray was born and raised. Sandtown-Winchester was also where the officers first saw Mr. Gray, chased him, handcuffed him, dragged him and placed him, unsecured, in the back of the police van that made multiple stops before bringing him to the Western Police District and then (because the officers noticed that he was unconscious) to the medical center. Certainly, the Civil Rights Division of the U.S. Department of Justice (DOJ) would not have initiated a pattern or practices investigation of the Baltimore Police Department (BPD), which resulted in a scathing, 163-page report issued on August 10, 2016.² In its report, the DOJ unleashed horrific details of the immense, long-time suffering of Baltimore's poor, Black men, women, and children, and concluded that the BPD had discriminated against them through its enforcement activities and systematically, through its pattern or practices, violated their First, Fourth, and Fourteenth Amendment rights.³

The twisted irony of this attention to Sandtown-Winchester, to other communities in Baltimore as well as to communities throughout

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¹ *PDF: Charging Documents for Freddie Gray*, BALT. SUN (Apr. 12, 2015, 3:10 PM), <http://www.baltimoresun.com/news/maryland/crime/bal-charging-documents-for-freddie-gray-20150420-htmlstory.html>.

² CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT (Aug. 10, 2016), <https://www.justice.gov/opa/file/883366/download>.

³ *Id.* at 24 (finding that the BPD violated the Fourth and Fourteenth Amendment rights of Baltimore residents); *id.* at 63–68 (explaining the disproportionate impact of BPD's enforcement activities on Black residents); *id.* at 116 (finding that the BPD routinely infringed upon the First Amendment rights of Baltimore residents).

the United States, most notably Ferguson, Missouri, is that it took tragic deaths at the hands, arms, knees, grips, and guns of police officers to bring attention to the holistic degradation of some of our most vulnerable residents of some of our most vulnerable, long-suffering communities. The suffering is both proximate and distant. It is proximate in the sense that Sandtown-Winchester is only a few miles away from Baltimore's wealthiest communities where, in every way measurable and immeasurable life could not be more different. One stark example is that life expectancy in Baltimore's poorest communities, including Sandtown-Winchester, is fifteen to twenty years lower than in Baltimore's wealthiest communities.⁴ Conversely, the suffering is distant in the sense that despite this geographical proximity, residents of these wealthy neighborhoods know very little, if anything, about Sandtown-Winchester and similar communities. They live close to the pain but often do not see or hear the suffering.

The aftermath of Freddie Gray's death, including the DOJ investigation into the BPD's practices, has finally given some voice to those who have long whispered and shouted about these circumstances and conditions, but who were seldom heard and, when they were, often ignored. The DOJ, the City of Baltimore and the BPD have negotiated a consent decree, in light of the DOJ's findings. As part of its negotiations, the DOJ sought community input regarding the issues that residents want to have included in the consent decree and addressed through the process.

On September 7, 2016, the University of Maryland Francis King Carey School of Law hosted a Town Hall to provide community input to the DOJ. The NAACP Legal Defense and Educational Fund, Inc. ("LDF") organized the event, which was co-sponsored by the law school as well as the Black Law Students Association, Student Bar Association, the *Journal of Race, Religion, Gender, and Class*, and Congressman Elijah Cummings. The event was open to community members and featured remarks from Congressman Cummings, Sherrilyn Ifill (President and Director-Counsel of the LDF), and Sonja Sohn (an actress, filmmaker and founder of *ReWired for Change*, an organization dedicated to "empower[ing] at risk youth, families and

⁴ 2013 Life Expectancy Data, BALTIMORE CITY HEALTH DEPARTMENT, <http://health.baltimorecity.gov/sites/default/files/Life-expectancy-2013.pdf>.

communities”).⁵ Members of the DOJ’s investigative team were present, one of whom provided an overview of the DOJ’s findings, as set forth in its Report.

Approximately 300 Baltimore residents attended the Town Hall. For over two hours, several dozen individuals provided public comment to the DOJ via two microphones at the front of the room. The frustration, distrust, and resignation that many residents expressed were palpable. Many of these feelings were rooted in the long-failed relationship between Baltimore’s Black communities and the BPD, as well as an exhaustive and reflexive criminal justice system that has brought many of the participants, their family members, their friends and/or their neighbors into negative contact with police officers, precincts, jails and courts in waves and, then, once these processes were complete, left them with criminal records that stand in the way of housing, employment, confidence, and positive outlooks. However, the deepest, loudest, and clearest frustration was that many of them had been screaming about these very issues for decades, but no one cared to listen. For them, the fact that it took Freddie Gray’s death to pull back the curtain on these conditions and for the DOJ to come to Baltimore to “validate” what they have long experienced, lived, and expressed further evidenced their marginalization and isolation.

In Sandtown-Winchester and other similar communities in Baltimore, each stage of the criminal justice system bears down on residents relentlessly. Incarceration is illustrative of this intense relationship. One-third of Maryland’s state prisoners are from Baltimore.⁶ According to the Justice Policy Institute, Baltimore has twenty-five “high incarceration communities.”⁷ Taxpayers spend at least \$5 million to incarcerate residents of each of these communities.⁸ However, Sandtown-Winchester, a community of 8,500 residents who live within seventy-two blocks, stands alone as Baltimore’s “highest’

⁵ *About Us*, REWIRED FOR CHANGE, <http://rewired4change.org/about-us> (last visited Dec. 17, 2016).

⁶ THE RIGHT INVESTMENT?: CORRECTIONS SPENDING IN BALTIMORE CITY, JUSTICE POLICY INSTITUTE 2 (Feb. 2015), http://www.justicepolicy.org/uploads/justicepolicy/documents/rightinvestment_design_2.23.15_final.pdf.

⁷ *Id.* at 13.

⁸ *Id.*

incarceration community.”⁹ Each year, taxpayers spend \$17 million to imprison the residents of this community.¹⁰

As a result of Freddie Gray’s death, many understand more deeply that the criminal justice system is but one—albeit hovering—aspect of community life in neighborhoods such as Sandtown-Winchester. The omnipresent criminal justice system, including the police officers who patrol and have the discretion to introduce and reintroduce residents to it, has followed and helped to reinforce the longstanding, historic and broad economic, socioeconomic, health, and educational disparities that isolate Sandtown-Winchester and Baltimore’s other poor, Black communities from the city’s wealthier White communities.

This special issue of the *Journal of Race, Religion, Gender and Class* explores some of these issues through six short essays, five of which are authored by professors at the University of Maryland Francis King Carey School of Law and the last of which is authored by a professor at the University of Maryland, College Park. These essays follow a special course taught first at the law school and then at College Park, *Freddie Gray’s Baltimore: Past, Present and Moving Forward*. The course was designed to expose law students, social work students,¹¹ and undergraduate students to some of the legal and non-legal structures, conditions, and circumstances that contextualize Freddie Gray’s encounter with the law enforcement officers on April 12, 2015, his death, and the anguish of residents that both preceded his encounter and, certainly, followed his death. While the course was organized by law professors it was interdisciplinary in approach. Various classes featured guest speakers, who included the Baltimore City Health Commissioner, a professor from the School of Social Work, lawyers who practice in Baltimore, and elected officials. The topics covered in the course were policing in communities, race and policing, housing segregation, education and the school-to-prison pipeline, cycles of violence, employment and economic development, and public health/access to health care.

⁹ *Id.* at 18.

¹⁰ *Id.*

¹¹ The law school course was open to law students and students from the University of Maryland, Baltimore’s School of Social Work.

The essays explore a few of these issues. Professor Barbara Bezdek lays out how the persistence of discrimination in Baltimore cordons off poor communities from resources, amenities that many of us take for granted (such as regular trash pickup), opportunities, and political accountability. As she states, “[i]n Baltimore, one’s actual location literally defines one’s social position.”¹² Indeed, a child born and raised poor in Baltimore is among the least likely in the United States to improve his or her economic standing in life.¹³ Baltimore’s male children are the *least* likely to improve economically.¹⁴

Professor Deborah Thompson Eisenberg examines the zero-tolerance disciplinary policies that disproportionately exclude Black, Latino, and disabled children from schools through suspensions and expulsions, that disproportionately refer these same children to law enforcement authorities for behavior that was once handled by school administrators and parents (and which remains true for White children), and, overall, increase the chances that these children will drop out of school and, one day soon, enter the juvenile and criminal justice systems. Again, history is important. Nothing here is new. Professor Eisenberg references a Children’s Defense Fund report from forty years ago that called out overly-punitive disciplinary measures that pushed children out of school.¹⁵ As a remedy, Professor Eisenberg asserts that suspensions should be used only as a last resort and that school districts should adopt and implement restorative practices, both to proactively set expectations and to handle conflicts—student-educator conflict and student-student conflict—in ways that allow students to remain in school and preserve both the sanctity and safety of the school setting.

Professor Leigh Goodmark offers the important lesson that while we often direct our attention to criminal *defendants* who are mistreated in the criminal justice system, the voices, perspectives and

¹² Barbara L. Bezdek, *Policing that Perpetuates Baltimore’s Islands of Poverty and Despair*, 16 U. MD. L.J. RACE RELIG. GENDER & CLASS 153 (2016).

¹³ RAJ CHETTY & NATHANIEL HENDREN, THE IMPACTS OF NEIGHBORHOODS ON INTERGENERATIONAL MOBILITY: CHILDHOOD EXPOSURE EFFECTS AND COUNTY-LEVEL ESTIMATES, HARV. U. & NBER 62 (May 2015), http://scholar.harvard.edu/files/hendren/files/nbhds_paper.pdf.

¹⁴ *Id.* at 63, 66.

¹⁵ Deborah Thompson Eisenberg, *Against School Suspensions*, 16 U. MD. L.J. RACE RELIG. GENDER & CLASS 163 (2016).

struggles of victims are often ignored or marginalized. She focuses on victims of intimate partner violence and argues that the criminal justice apparatus actually exacerbates their harm, as the increased prosecution of their partners over the last forty years has seemingly not “deter[red] intimate partner violence,” and as the resulting criminalization can contribute to continuing violence.¹⁶ There is a disturbing parallel between the issues that Professor Goodmark raises and the DOJ’s findings that the BPD often trivializes and dismisses sexual assault victims from the very same Baltimore communities where officers bring all of their might. The sad and important lesson here is that residents, suspects, and sexual assault victims, all from these communities, are stripped of their humanity. They are disposable.

Professor Robert Koulish shares his concerns that high-tech surveillance strategies are used to exacerbate racial disparities in Baltimore’s criminal justice system. As he puts it, these surveillance methods—such as blue light cameras and stingrays—extend law enforcement’s reach into “high crime” neighborhoods. He explains that there is a direct correlation between the technology and officers who are deployed to interact with residents. The result is further erosion of the already lesser constitutional protections afforded to residents such as Freddie Gray, as this “regime combines state of the art technologies, city operations and legal doctrine to surveil ‘high crime’ areas and give chase almost at will and by law.”¹⁷

Professor Doug Colbert takes us to the criminal trials of the officers whose interactions with Freddie Gray led to his death. As he observes, the criminal charges and the trials were unprecedented and continue to be controversial, while the results (none of the three officers who went to trial were convicted and the charges against all of the officers were ultimately dismissed) were, depending on to whom you talk, dispiriting, deflating, expected, affirming, or relieving. He uses the lessons learned from the trials to urge various reforms to

¹⁶ Leigh Goodmark, 16 U. MD. L.J. RACE RELIG. GENDER & CLASS 173, 174 (2016).

¹⁷ Robert Koulish, *The Databasing of Freddie Gray*, 16 U. MD. L.J. RACE RELIG. GENDER & CLASS 179, 183 (2016).

policing, to investigating claims of officer wrongdoing and, ultimately, to prosecuting police officers.¹⁸

Last, Professor Michael Greenberger returns to the DOJ Report and to the consent decree process. He recognizes that the process for moving forward is daunting but gives reasons to hope that the future will be better than the past and the present. Specifically, he articulates that, historically, consent decrees that have run their course “dramatically improve[.]” police/community relations and help to lower crime in the jurisdiction.¹⁹ He uses Cincinnati’s consent decree process, which followed the police killing of an unarmed Black man, Timothy Thomas, as a positive example of reform. Based on those reforms, Professor Greenberger concludes, “there is every reason to be optimistic about the current situation in Baltimore....”²⁰

The overarching lesson here is that Freddie Gray’s death, and the criminal justice apparatus that led to it, cannot be viewed in a vacuum. The interaction that led to his death is tethered to deep, long-standing conditions that set apart and isolate young Black men such as Mr. Gray (as well as women and children) who live in poor, Black communities such as Sandtown-Winchester from opportunity, collective well-being, and, in many ways, dignity and humanity.

With this context at the forefront, there are now deep concerns about whether the DOJ, under the new presidential administration, will continue its investigatory and enforcement work in Baltimore as well as in the several jurisdictions throughout the United States where it has responded to similar incidents in similar ways over the past few years.²¹ As with the lives of the residents the DOJ Report aims to improve, the consent decree process as well as the forward steps that are necessary to even begin the process to build trust in law

¹⁸ See generally, Douglas Colbert, *Prosecuting Baltimore Police Officers*, 16 U. MD. L.J. RACE RELIG. GENDER & CLASS 185 (2016).

¹⁹ Michael Greenberger, *The Only Reliable Way to Rebuild Police-Community Relations: The Justice Department Pattern and Practice Consent Decrees*, 16 U. MD. L.J. RACE RELIG. GENDER & CLASS 201, 204 (2016).

²⁰ *Id.* at 207.

²¹ See Maurice Chammah, *What Trump’s Win Means for Chicago and Baltimore’s Cops*, THE MARSHALL PROJECT (Nov. 9, 2016, 10:00 PM) (“Under a new attorney general...[n]ew investigations could grind to a halt, and court-order consent decrees could stall...”).

enforcement, to value the rights, lives, rights, and dignity of all residents equally and to develop relationships between communities and law enforcement that are necessary to improve public safety, are in fragile flux.