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PROSECUTING BALTIMORE POLICE OFFICERS

Douglas L. Colbert*

It is unusual to see a police officer sitting in the courtroom seat of the criminal defendant and charged with killing a person while on duty. Even when evidence supports prosecution, officers rarely face trial.¹ Historically, American-style justice deferred to State and local custom that called for no charges filed, particularly when sheriffs and police targeted victims included African-Americans, people of color, the poor, and other subordinated groups.

The past fifty years have seen added processes, such as police investigations, prosecutors' review and grand jury action, replace the virtual automatic immunity given officers but little substantive change in the outcomes that overwhelmingly protect law enforcement from prosecution. Today's decision-makers usually find officers' deadly conduct justified and reasonable, including the Cleveland officer who fired forty-nine shots through a car windshield killing an unarmed Black couple,² or they conclude insufficient evidence exists to charge crimes.³

The *Washington Post's* recent national survey confirmed the infrequency of prosecutors initiating charges when it revealed that of roughly 10,000 police killings during the 2005–2015 decade, only fifty-four officers faced prosecution.⁴ In the rare instance when public

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¹ See Kimberly Kindy & Kimbriell Kelly, *Thousands Dead, Few Prosecuted*, WASH. POST (Apr. 11, 2015),

<http://www.washingtonpost.com/sf/investigative/2015/04/11/thousands-dead-few-prosecuted/> (quoting Philip M. Stinson, a criminologist at Bowling Green who maintained, "To charge an officer in a fatal shooting, it takes something so egregious, so over the top that it cannot be explained in any rational way").

² Mitch Smith & Ashley Southall, *Cleveland Police Officer Acquitted of Manslaughter in 2012 Deaths*, N.Y. TIMES (May 23, 2015),

http://www.nytimes.com/2015/05/24/us/michael-brelo-cleveland-police-officer-acquitted-of-manslaughter-in-2012-deaths.html?_r=0.

³ See, e.g., Press Release, U.S. Att'y Off. S.D.N.Y., U.S. Attorney's Office Closes Investigation into the Death of Ramarley Graham (Mar. 8, 2016) (announcing that the Southern District of New York lacked sufficient evidence to bring charges against a NYPD officer for the 2012 death of 18-year-old Ramarley Graham).

⁴ Kindy & Kelly, *supra* note 1.

outcry, protest and mobilization led local officials to initiate prosecution, police defendants could usually rely on a further safeguard: being acquitted either by a judge or a predominantly- or all-white jury.⁵

That is what first made Baltimore City's prosecution and decision to hold the six officers involved in Freddie Gray's death accountable this past year a stunning development. In a sense, State's Attorney Marilyn Mosby's decision to prosecute became the 200:1 shot that few in Freddie Gray's, African-American community could have expected. Surely, it surprised the police union which had supported Mosby's election bid against the incumbent, in part because they knew she came from a family of officers.⁶ The union anticipated Mosby would treat Freddie Gray's death the same as her predecessors had done in other alleged police homicides: bring no charges because no crime had occurred.

Yet, following a series of protests and an uprising that followed Freddie Gray's funeral on April 27, 2015, six Baltimore officers found themselves being processed in Central Booking jail and

⁵ Id. (indicating national, decade-long data involving 10,000 police killings, 11 officers convicted either by jury or guilty plea); Huffington Post, <http://www.huffingtonpost.com/entry/police-shooting-convictions.us-5695968ce4b086c1cd5d0da>, concluded "in the rare instances in which they [police] face charges . . . judges and juries have exhibited a tendency to side with the police." D. Colbert, *Challenging the Challenge, Thirteenth Amendment as a Prohibition Against the Racial Use of Peremptory Challenge*, 76 Cornell L. Rev. 1, 110-117 (all-white jury's role and supporting data denying impartial justice to African-American victims); See Seth Mydans, *The Police Verdict; Los Angeles Policemen Acquitted in Taped Beating*, N.Y. TIMES (Apr. 30, 1992), <http://www.nytimes.com/books/98/02/08/home/rodney-verdict.html> (describing how a venue change led to an absence of African Americans in the jury that acquitted the LAPD officers accused of brutally beating Rodney King).

⁶Mark Puente, *Mosby says she learned from mistakes of family members in law enforcement*, BALT. SUN, (July 15, 2015), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-mosby-family-20150715-story.html>; see Editorial, *The FOP's Offensive Tweets*, BALT. SUN, (June 27, 2016), <http://www.baltimoresun.com/news/opinion/editorial/bs-ed-fop-20160627-story.html>. In the past, President of BPD's Union, Lieutenant Gene Ryan, has referred to protesters as a "lynch mob," and accused Mosby's office of conducting a "malicious" prosecution. *Id.*

brought before a city lower court judge.⁷ The officers faced an assortment of serious charges including homicide, assault, and misconduct.⁸ It was a rare example of a homicide prosecution of on-duty officers. Within the past 30 years, only five Baltimore city police officers faced criminal charges for on-duty killings of civilians.⁹ Judging from the union's vocal and embittered response to the Freddie Gray prosecutions, they hoped it would be the last one for the next several decades as well.¹⁰

Though no convictions resulted from the four trials held between December 2015 and June 2016,¹¹ the ground-breaking and vigorous prosecution came closer to conviction than critics' pretrial comments suggested. Indeed, the prosecution's evidence persuaded the trial judge that the charges had sufficient merit to bring the cases to trial and to reach a verdict.¹² The cases served notice to officers that in the future, they could be held liable and face prosecution and conviction.

I. BRINGING OF CHARGES

When the State's Attorney for Baltimore, Marilyn Mosby, announced the arrests on May 1, 2015 and followed with indictments, the local prosecutor had done the unthinkable.¹³ Bypassing the internal

⁷ Nick Gass, *In Swift Move, 6 Police Officers Charged in Freddie Gray's Death*, POLITICO (May 1, 2015, 10:52 AM), <http://www.politico.com/story/2015/05/freddie-gray-death-homicide-baltimore-117551>.

⁸ *Id.*

⁹ Doug Donovan and Jean Marbella, *Baltimore police rarely charged in deaths* BALT. SUN (May 17, 2015), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-gray-police-rare-charges-20150516-story.html>. The one officer found guilty had his conviction overturned on appeal. *Id.*

¹⁰ Noam Scheiber, *Police Struggle with Loss of Privileged Position*, N.Y. TIMES (May 5, 2015), <http://www.nytimes.com/2015/05/06/us/police-struggle-with-loss-of-privileged-position.html>.

¹¹ Trials commenced December 2015 and concluded June 2016.

¹² Kevin Rector, *Charges Dropped, Freddie Gray Case Concludes with Zero Convictions Against Officers*, BALT. SUN (July 27, 2016, 8:57 PM), <http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-ci-miller-pretrial-motions-20160727-story.html>.

¹³ Alan Blinder & Richard Pérez-Peña, *6 Baltimore Police Officers Charged in Freddie Gray Death*, N.Y. TIMES (May 1, 2015),

police investigation, which invariably cleared officers of wrongdoing, she asked her staff to conduct its own investigation with input from the State Police and city Sheriff.¹⁴ While the head of the police investigation believed the officers committed no crimes and suggested civil liability would address possible negligence, Mosby's team viewed the evidence in a different light.¹⁵ Granting testimonial immunity to some officers overcame their usual obedience to the infamous code of silence and produced testimony that led grand jurors to indict and gave prosecutors' hope for conviction.¹⁶

The days, weeks, and months that followed the officers' arrest tested Mosby's prosecutorial resolve. The city's top prosecutor incurred the public wrath of the union. Former prosecutors accused Mosby of incompetence and grandstanding, while defending their office's common practice of declining to prosecute a police on-duty homicide.¹⁷ The union called for her removal and the appointment of a special prosecutor, only months after having vigorously opposed legislation to create a statewide office to prosecute police

<http://www.nytimes.com/2015/05/02/us/freddie-gray-autopsy-report-given-to-baltimore-prosecutors.html>.

¹⁴ Wil Hylton, *Baltimore vs. Marilyn Mosby*, N.Y. TIMES (Sept. 28, 2016), <http://www.nytimes.com/2016/10/02/magazine/marilyn-mosby-freddie-gray-baltimore.html>; Justin Fenton, *Baltimore Prosecutors Reached Out to, Did Not Use State Police in Freddie Gray Investigation*, BALT. SUN (July, 29, 2016, 3:11 PM), <http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-ci-state-police-freddie-gray-20160728-story.html>.

¹⁵ Justin George, *Former Police Commissioner: Mosby "Incompetent" and "Vindictive"*, BALT. SUN (July 27, 2016, 5:35 PM), <http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-ci-batts-gray-20160727-story.html>.

¹⁶ See Neal Trautman, *Police Code of Silence: Facts Revealed*, AELE LAW ENFORCEMENT LEGAL CENTER (2000), <http://www.aele.org/loscode2000.html> (maintaining that the code of silence not only exists, but that it will manifest to some extent among officers in all agencies); Doug Colbert, Opinion, *Many Obstacles to Prosecuting Police*, BALT. SUN (July 12, 2015, 10:00 AM), <http://www.baltimoresun.com/news/opinion/oped/bs-ed-mosby-colbert-20150713-story.html>.

¹⁷ See, e.g., Michael Biesecker & Ben Nuckols, *Experts: Convictions Will Be Tough to Win in Baltimore Case*, HOUS. CHRON. (May 2, 2015), <http://www.houstonchronicle.com/news/nation-world/nation/article/Experts-Convictions-will-be-tough-to-win-in-6238794.php> (citing criticisms by former prosecutor Andrew Alperstein).

misconduct.¹⁸ Lawyers for the police moved to transfer the case from Baltimore to a friendlier county for police defendants.¹⁹

None of the defendants' motions succeeded but they generated a strong pro-police and anti-Mosby sentiment in op-ed articles and letters.²⁰ Writers accused Mosby of rushing to judgment, of feeding her ambition and self-promotion, and of pandering to the African-American community. They claimed Mosby's inexperience and incompetence resulted in ethical violations when announcing the arrests. Defense lawyers threatened civil lawsuits, which materialized months later, and sought court sanctions.²¹ Media coverage regularly included critical comments against the prosecution's case.

I joined the all-too-frequent toxic and one-sided conversation by providing an alternative perspective, namely that the public interest is best served by protecting prosecutors' intention to present evidence before a Baltimore trial jury, learn what happened to cause Freddie

¹⁸ Doug Donovan, *FOP Calls on Prosecutor to Recuse Herself, Defends Officers*, BALTIMORE SUN (May 1, 2015, 11:03 AM), <http://www.baltimoresun.com/sports/bs-md-fop-letter-20150501-story.html>.

¹⁹ *Id.*; Wes Bruer, *Police Officers in Freddie Gray Case: "Absurd" to Hold Trial in Baltimore*, CNN (July 7, 2015, 7:01 PM), <http://www.cnn.com/2015/07/07/politics/freddie-gray-police-officers-defense-trial/>.

²⁰ See, e.g., Augusta Chron. Editorial Staff, Editorial, *An Obvious Overreach*, AUGUSTA CHRON. (May 28, 2016, 12:15 AM), <http://chronicle.augusta.com/opinion/editorials/2016-05-28/obvious-overreach> (suggesting that Mosby was acting as an activist rather than a prosecutor when she brought charges against the six officers); Graham Rayman, *Bratton Says Marilyn Mosby Overcharged Cops in Freddie Gray Death*, N.Y. DAILY NEWS (May 24, 2016, 12:33 PM), <http://www.nydailynews.com/news/national/bratton-marilyn-mosby-overcharged-cops-freddie-gray-death-article-1.2648234>; *Prosecutor "Overcharged" Baltimore Officers, Local Attorney Says*, NPR (May 4, 2015, 4:48 PM), <http://www.npr.org/2015/05/04/404236469/prosecutor-overcharged-baltimore-officers-local-attorney-says>; Sean Piccoli, *Ex-FBI Official: Baltimore Prosecutor "Likely" Overcharged Cops*, NEWSMAX (May 4, 2015, 8:43 PM), <http://www.newsmax.com/Newsmax-Tv/Ron-Hosko-Orrin-Hudson-Baltimore-indictment/2015/05/04/id/642553/>.

²¹ See Elliott C. McLaughlin & Steve Almas, *Freddie Gray Officers Suing Prosecutor Marilyn Mosby*, CNN (July 28, 2016, 11:52 AM), <http://www.cnn.com/2016/07/27/us/baltimore-marilyn-mosby-officer-lawsuits-freddie-gray/> (noting that "the lawsuits allege false arrest, false imprisonment, defamation or false light, and other assertions.").

Gray's death,²² and allow jurors to decide whether an officer should be held criminally responsible for failing to seatbelt, safeguard, and provide medical attention for an arrestee.²³ As the public viewed the video of Freddie Gray being dragged and apparently injured before entering the van, the transparency of a public trial became an imperative to allow the community to judge whether the evidence supported conviction.

II. THE TRIALS: OFFICER WILLIAM PORTER

I attended almost every moment of the four separate police trials, which began on November 30, 2015 with that of Officer William Porter, a 28-year-old African American and lifetime city resident. Initially, the prosecuting attorneys planned to conduct multi-defendant, consolidated trials which judges generally prefer over individual trials because of cost and judicial economy. When the judge denied the prosecution motion to try Porter with two other officers and granted separate trials for each of the six defendants, the prosecutors' interest turned to the order of the trials and they opted to try Officer Porter first. Typically, judges defer to the prosecution's strategy and suggested placement of defendants.

Officer Porter had responded to the police "bikers'" call for assistance. Upon arrival, Porter observed a cuffed and shackled Freddie Gray on the ground outside the van with officers then carrying a "hog-tied" Gray inside and onto the floor. Three stops later, Officer Porter answered the van driver's call to check on Gray. Entering through the rear door, Porter approached a weakened Freddie Gray lying face down. Gray answered "yes" when Officer Porter asked whether he needed medical assistance. Porter never called for a medic or fastened Gray's seat belt. When Officer Porter left the van, he placed Gray on the prisoner's bench unbelted and without restraints.

²² Colbert, *supra* note 16. Police supporters' effort to influence public opinion included suggestions that Gray self-inflicted the injuries or they resulted from lead paint poisoning as a child.

²³ See Jennifer Ludden, *Questions in the Freddie Gray Case – And Answers from the Ongoing Trial*, NPR (Dec. 8, 2015, 4:21 PM), <http://www.npr.org/2015/12/08/458950280/why-didn-t-officer-call-medic-for-freddie-gray-and-other-questions> (quoting Officer Porter, who explained at trial that the back of the van was a tight space which made seat-belted suspects exceedingly dangerous).

At trial, Porter chose to be tried by a twelve-person Baltimore jury rather than a bench trial with the judge, who subsequently would try the next three defendants. The multi-racial jury that eventually deliberated included six Black and six White jurors. From the defense perspective, a jury made good sense. Defense lawyers generally believe that it is easier to find one juror with reasonable doubt than it is to persuade a single judge to get it right.

Officer Porter's trial differed from that of his co-defendants because he chose to testify. Porter had given extensive statements to two investigating detectives and his 30-minute video interview included damaging evidence that required explanation. Porter's trial testimony deviated and appeared inconsistent from what he previously told the detectives.

First, a female detective testified speaking to Porter and being told Freddie Gray uttered, "I cannot breathe" at stop four when Porter checked his condition. If true, that would have alerted Porter to the necessity of medical aid. At trial, Porter rejected the detective's account. He testified hearing these words at the first stop before seeing Gray shackled outside the van.

Second, an interrogating detective questioned Porter about not calling for a medic after hearing Gray say he wanted one and seeing Gray's head slumped onto Gray's shoulder. Porter told the detective that waiting for the medic would take too long and thought it faster for the van driver to take him for medical care. At trial, Porter testified to finding no signs of Gray's injury that required immediate medical care.

Third, the same interrogating detective asked why Porter had not fastened Gray's seat belt. Porter referred to the police practice of not doing so but never mentioned being in too tight a space or in fear of Gray. That made sense since Porter had told the detective he stood inches from Gray when helping him stand and positioning him onto a bench. At trial, Porter modified his response, saying police always worry about the danger of prisoners taking the officer's weapon or spitting when placing themselves in close proximity, and gave that reason for not belting Gray in.

Lastly, the investigating detective suggested Freddie Gray was in a non-threatening condition because of his severe neck injury and that Porter could have belted Gray in safely. At trial, Porter described Freddie Gray able to lift himself with minimal assistance, a version consistent with the defense theory that Gray's broken neck occurred afterwards.

The jury wrestled with these inconsistencies and with conflicting witness testimony. Jurors deliberated from Monday afternoon to late Wednesday afternoon when they returned with non-unanimous verdicts on the four charges, which resulted in a mistrial. While most media regarded the mistrial a defense victory, the prosecution had come very close to convicting the officer on two charges. According to the Baltimore Sun's account, the jury voted 10-1 to convict on the "Official Misconduct" charge and agreed by a 7-3 majority to convict on Reckless Endangerment.²⁴ Jurors evenly divided on a third charge and 11 jurors would have acquitted on Reckless Manslaughter.²⁵ The Judge declared a mistrial two days after deliberation began.²⁶ A juror thought the jury might have reached unanimity had it deliberated further.²⁷

III. POLICE PROSECUTIONS: A SYNOPSIS

I witnessed the Baltimore State's Attorney Office prosecute three other defendants at separate trials: Officers Nero and Goodson and Lieutenant Rice. However, before the first of these trials began, the rare intervention of an appeals court caused an unexpected delay. Officer Nero's trial would commence four months later.

Following the Porter mistrial, the prosecution asked to retry Officer Porter before moving to the trials of his five co-defendants. From the outset, the prosecution's theory had focused upon convicting Porter and encouraging his cooperation as a witness against the other officers. The Judge, though, rejected the request and placed Porter at

²⁴ Kevin Rector & Justin Fenton, *Jury in Officer Porter Trial Was One Vote from Acquittal on Most Serious Charge*, BALT. SUN (Jan. 16, 2016, 3:46 PM), <http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-ci-porter-jury-split-20160115-story.html>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

the end of the queue. Doing so created a major hole in the prosecution strategy of trying its strongest case first and gaining the cooperation of a convicted defendant.

The court's rejection of Porter's retrial led to two court rulings regarding the prosecution's power to grant witness immunity and compel testimony, as long as it protects the witness' privilege against self-incrimination by prohibiting prosecutors from using the testimony at their trial. Following Maryland procedure, the first ruling granted immunity to Officer Porter; the court, however, denied prosecutors giving immunity to "biker" Officer Miller by questioning the prosecution's good faith. Not surprisingly, the defense appealed the Porter ruling and the prosecution followed by appealing the trial judge's Miller decision. Because witness immunity is a well-settled issue that could be readily decided, it remained puzzling why the appellate court ordered oral argument rather than ruling on the motions. The resulting delay from January to April caused a sudden halt to the prosecution's momentum after it had nearly convicted Officer Porter.

When the appellate court predictably overruled the trial court's denial of witness immunity, the parties returned to trial. From that point forward, the mood appeared to shift in the courtroom and a series of unpleasant and contentious exchanges unfolded between the judge and the prosecuting attorneys. Observers are not privy to what is said at bench conferences and it is not certain what caused the atmospheric change, but subsequent rulings favored the defense. Even relatively straightforward matters, such as the prosecutor's proposed order for trying the remaining defendants – a matter usually honored absent a showing of prejudice or inconvenience – became a battleground. The judge openly questioned the prosecution's credibility for seeking witness immunity, and subsequently denied prosecutors preferred order. Officer Nero's trial would proceed next, followed by van driver Goodson, supervising Lieutenant Rice, Officer "biker" Miller, and Sergeant White, who checked Freddie Gray's condition at stop five.

IV. OFFICERS NERO AND GOODSON AND LIEUTENANT RICE

The prosecution could not have been pleased with the Judge moving Officer Nero to the first position following the Porter mistrial.

Originally, he was placed in the next-to-last position. Officer Nero and his partner, Officer Miller, both young, White and relatively new to the force, were two of the three “biker” officers who responded to their supervising officer, Lieutenant Rice’s, call for assistance. Officer Miller, testifying under immunity, assumed the primary role of chasing and apprehending Gray; a video showed Miller kneeling him in the back as Gray lay face down on the ground. Nero’s passive role as the back-up officer amounted to protecting Miller against a potential escape and assisting to lift Gray onto the van.

From the defense perspective, Officer Nero’s choice of being tried before Judge Williams and not a trial jury made sense. Nero’s trial involved issues of law, namely how would the “reasonable” officer have acted, and whether the officer received timely notice of the Police Commissioner’s mandate that transported prisoners be belted in. The defense lawyers preferred these issues to be decided by a judge rather than a jury. Though a judicial fact-finder could infer that Nero was aware Freddie Gray needed medical care and required a fastened seat belt per the Police Commissioner’s prior orders, evidence of his limited involvement and contrary expert opinions likely explain the Judge’s finding that the prosecution had failed to prove guilt beyond a reasonable doubt. The court also appeared unimpressed with the prosecution’s theory of assault that involved Officer Nero’s unauthorized touching during Gray’s arrest.

Following the court’s acquittal of Officer Nero, the public waited for what they considered the prosecutor’s strongest case – that of the van driver, Cesar Goodson, a veteran African-American officer. Goodson had been identified by other officers and defense lawyers as the person responsible for prisoner care. At his trial, however, Goodson’s lawyers shifted responsibility to commanding officer, Lieutenant Rice.

Among the defendants, Officer Goodson faced the most serious charge – causing a person’s death because of a wanton and reckless indifference to human life along with other crimes. While critics accused prosecutors of overcharging, the evidence presented could have led a fact-finder to conclude the officer showed a blatant lack of concern for Gray’s life or well-being. Charging the more serious “wanton indifference” homicide also permitted a fact-finder to convict on the lesser reckless manslaughter crime that required an “awareness”

and “conscious disregard of the substantial risk of death or serious injury.”

The prosecution’s testimony established Goodson’s responsibility to protect and care for prisoners, to search prisoners for weapons before entering the van, to question the prisoner and learn the extent of his injuries, and to ensure the custodial prisoner’s safety during transport. The video evidence showed Goodson failed to take any of these actions: he never entered the van, never spoke to Freddie Gray, never conducted a search, and never asked whether Gray needed a medic. Indeed, aside from when he approached to close the van doors, Goodson consistently remained outside and at a substantial distance from Freddie Gray’s prone position. Officer Goodson allowed the arresting officers to enter and place a restrained Gray face down on the metal floor, his head inches from hitting the metal wall. Even after calling for police assistance, Goodson stayed at a distance where he could not hear Porter’s conversation or observe Gray. Might a reasonable fact-finder conclude that Goodson’s indifference to Gray’s condition and failure to fulfill his duty to protect his prisoner represent a wanton disregard for human life? Might the fact-finder conclude that the officer’s awareness of the substantial risk and conscious disregard of Gray’s injuries and plea for medical help, even after Porter reported to him following his examination, amount to reckless manslaughter? Goodson declined to fasten Gray’s seat belt during the remaining drive.

The presiding judge’s lengthy and detailed ruling concluded that the prosecution failed to present sufficient direct evidence to establish Officer Goodson’s guilt beyond a reasonable doubt on any of the charges. He emphasized that the prosecution had presented insufficient proof of a “rough ride” to establish the wanton indifference or simple recklessness required for manslaughter. The Judge found Officer Goodson not guilty.

Lieutenant Rice, an experienced, White police officer with eighteen years on the city’s force stood trial next. Indeed, he would be the fourth and last defendant to be tried. The trial testimony revealed his role as the officer-in-charge. Indeed, it was he who set the wheels in motion when he saw Gray running, followed after him by bicycle, and ordered Miller and Nero to apprehend and arrest him. The lieutenant supervised several officers shackling, cuffing and lifting

Gray onto the van. Lieutenant Rice climbed inside and remained there for only eleven seconds before leaving and without protecting Gray against serious harm. At the next stop, the lieutenant ordered Gray to be removed from the van so that his cuffs and shackles could be replaced, following which he was returned to the same position on the van floor. A fact-finder could conclude that the lieutenant appeared indifferent to Freddie Gray's health and well-being, that the veteran commanding officer was aware of the Police Commissioner's directives and disregarded his duty to care for the prisoner and to fasten the seat belt. At no time did the lieutenant order his subordinates to take Gray for medical help or to safeguard him.

The Judge again found that the prosecution failed to present sufficient evidence to meet its burden of proving guilt beyond a reasonable doubt and concluded he was not guilty.

CONCLUSION

Following the court's third acquittal, State's Attorney Marilyn Mosby conceded the same result would likely follow against the remaining defendants and correctly dismissed the charges against Officers Miller and Porter and Sargent Alicia White. While the prosecutor's decision reflected that reality, the trials of the officers charged with the death of Freddy Gray served the public interest. Contrary to critics' repeated charge that the prosecutions had been politically motivated and unwarranted, the prosecution presented much stronger evidence than the public had been led to believe. The trial judge, too, agreed that the evidence warranted a jury's or judge's verdict. Indeed, the State's Attorney's ethical duty to seek justice for Freddy Gray and the public community required nothing less than a committed prosecution. Consider, too, the deliberations of the multi-racial Baltimore jury, which overwhelmingly agreed to convict on one charge and decisively favored conviction on a second offense. One need not speculate whether additional deliberation might have resulted in a unanimous verdict to appreciate that ordinary citizens concluded crimes had occurred. Had jurors rather than a judge heard the evidence, they may have come to a different conclusion and found a sufficient factual and legal basis to convict Officer Goodson, Lieutenant Rice, and Officer Porter on retrial.

The public trials of the officers criminally charged with the death of Freddie Gray while in police custody served other important purposes, too. The trial educated the public about police practices. It enhanced public understanding about the legal system's requirements and the way it protects some who are accused of crime and others who are victims of crime. Providing access to open trial courtrooms allowed people to hear a more complete version of events, and made it easier for the African-American community to accept the verdicts without a violent reaction, as media reported and some feared. Public trials revealed the deficiencies and areas needing immediate reform to reduce the likelihood of someone else dying in police custody. In matters of high public interest, televising trials would educate more people about the prosecution's determined effort to convict and the strong defense offered by the police defendants.

The prosecution of six Baltimore police officers provided a rare glimpse into police practices in the city's African-American, Sandtown-Winchester community where Freddie Gray lived. The policing of people of color and low-income and impoverished neighborhoods is remarkably different than the policing taking place in Baltimore's upscale and predominantly white neighborhoods. In privileged Baltimore, white men not engaged in criminal activity may run on a quiet Sunday morning with police in the area without fearing that the police will chase, capture, and physically injure them. The privileged cannot imagine what they could do that would lead to officers pursuing them on bikes—that would lead to being tackled, cuffed, dragged, and shackled—and being “hog-tied” on the metal floor of a moving vehicle without means of protection from banging against the metal walls during a 45-minute car ride. Freddie Gray knew. Maybe that explains why he ran away from officers after previous encounters.

Freddie Gray was not the only vocal person heard screaming for help. People could be heard on videos objecting loudly to police actions. On talk shows, retired officers expressed shame for the way Gray was treated and their voices must be heard, too. For future prosecutions to succeed, the entire Baltimore community must call for the end of the police code of silence and support the many professional officers willing to step forward as witnesses. Officers must protect prisoners in custody, and intervene when their brother and sister officers participate in conduct that jeopardizes prisoners' safety or

results in violent “attitude” arrests and unsafe police rides. Every person taken into custody deserves humane treatment.

Bringing homicide and criminal charges against police officers happens infrequently. Some say that is because the police act properly and only use deadly force when justified and necessary. The recent Department of Justice report says otherwise.²⁸ It suggests a police culture where some officers regularly violate people’s rights with impunity from punishment. When police internal investigations appear to tolerate police criminality, the public loses faith in impartial justice and rejects the official version of what happened. To gain public support when police are unfairly accused, the people must see and hear for themselves if they are to accept the no-prosecution or not guilty outcome. Transparency also helps ensure that officers who do wrong or commit crime are held accountable in order to deter others.

The police defendants received a good defense and fair trials. Freddie Gray suffered a tragic, painful, brutal and unnecessary death. State’s Attorney Marilyn Mosby declared after the last trial that substantial change must occur or the same outcomes – acquittals and mistrials – will follow.²⁹

The State’s Attorney and Police Commissioner Kevin Davis can point to many positive improvements since Gray’s death. Police installed cameras in vans and on officers, and enhanced training and communication of command orders would have provided the Gray prosecutors with much needed trial evidence.³⁰ The State’s Attorney’s call for citizens’ participation during investigations and on disciplinary boards should further community cooperation.

²⁸ See CIVIL RIGHTS DIVISION, U.S. DEP’T OF JUSTICE, INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT 3 (Aug. 10, 2016), <https://www.justice.gov/opa/file/883366/download> (reporting that the “BPD engages in a pattern or practice of conduct that violates the Constitution or federal law.”).

²⁹ Hylton, *supra* note 14.

³⁰ Kevin Rector, *Baltimore Police Rolling Out Transport Vans with Cameras, Redesigned Interiors*, WASH. POST (June 1, 2016), https://www.washingtonpost.com/local/public-safety/baltimore-police-rolling-out-transport-vans-with-cameras-redesigned-interiors/2016/05/31/9fbdceee-2776-11e6-a3c4-0724e8e24f3f_story.html#comments.

Law enforcement officials must go farther, and find concrete ways to build community trust and partnership. When that happens, the police and prosecution can expect mutual respect and cooperation from witnesses needed to convict wrongdoers. The community, too, will gain important allies in meeting their safety needs. Together, they can forge a partnership to address real structural reform and overlooked economic, educational, health care, and equal justice needs.