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## **INTENDED OR NOT, A *VERY* ROUGH RIDE**

### ***A hung jury and two acquittals mar a prosecutor's crusade against police violence***

*By Julius (Jay) Wachtel.* By now the name "Freddie Gray" has been burned into the minds, if not the conscience, of most every criminal justice professional in the U.S. Briefly, the facts are as follows. During the morning hours of April 12, 2015 Gray, 25, [tried to dodge a police bicycle patrol](#) while walking around inner-city Baltimore. Suspicious cops chased him down and, during a brief but, witnesses say, violent struggle, allegedly found a switchblade in his pockets.

Gray was handcuffed, dragged into a police van and hauled away. One block later the vehicle pulled over. Gray was supposedly thrashing around, so officers shackled his feet. About forty-five minutes later the vehicle, now hauling a second arrestee, pulled into its destination. Officers found Gray on the floor, non-responsive. He was hospitalized with severe spinal cord trauma and died a week later. (For a timeline of the stops click [here](#).)

Most everyone agrees that Gray was never buckled in and that he sustained his fatal injury during the van ride. Three things remain in contention: whether cops purposely drove erratically, whether Gray was purposely left unsecured, and whether his pleas for medical attention, made early during the incident, were purposely ignored.

This isn't the first time that Baltimore officers have been accused of such things. Yet it's seemingly a first for what came next. Six cops, including a lieutenant and a sergeant, were quickly suspended. Baltimore city prosecutor Marilyn Mosby then did the unthinkable: [she promptly charged each officer](#) with crimes ranging from misconduct in office to, in one case, murder.

Many welcomed her aggressive posture. After all, only nine days before Gray's arrest, Baltimore PD [issued a policy](#) requiring that officers obtain medical attention for detained persons "when necessary or requested, and that "whenever a detainee is transported in a police vehicle" they be "secured with the provided seat belt or restraining device." But some observers worried that the cases were seriously overcharged. After all, proving to a criminal certainty that officers were motivated by a depraved purpose is no easy feat.

So far the concerns have been borne out. [Officer William Porter](#), who was accused of failing to summon medical aid for Gray, was the first to go on trial. Although his

involvement was clearly the most peripheral, Officer Porter faced several charges, including involuntary manslaughter. Jurors deadlocked on all counts, and on December 16, 2015 a mistrial was called.

Since then there have been two more trials, both by the bench, and both with the same outcomes. On May 23, [Officer Edward Nero](#), a bicycle cop who helped detain Gray and place him in the van, was found innocent on all counts, including reckless endangerment and assault. One month later, [Officer Caesar Goodson](#), the van's driver and the only defendant facing murder charges, was also fully acquitted. When rendering his decision, the judge complained that prosecutors failed to prove that Gray got the "rough ride" prominently featured in their opening argument. "As the trier of fact, the court can't simply let things speak for themselves," he scornfully remarked.

Three more trials are pending – the retrial of Officer Porter, and the trials of Sergeant Alicia White and Lieutenant Brian Rice. Given what's already happened, there is little expectation that prosecutors will meet their evidentiary burden.

On the other hand, as Baltimore well knows, civil cases present a much lesser burden of proof. That may be one reason why it settled with Gray's family in November for \$6.4 million. Another is that this wasn't the first time that Baltimore's finest have been accused of giving rough rides. More than a decade ago, in November 2005, [officers hauled away a man](#) arrested for urinating in public. When Dondi Johnson Sr. was placed in the police van he seemed in good health, but when it arrived at its destination he was paralyzed with a broken neck. Johnson died from complications two weeks later. Before his death, he said that he had been handcuffed but not belted in, and that the officer's aggressive driving had mercilessly flung him around the van.

But that was pre-Gray. Despite [a standing order](#) that detained persons be belted in during transport, none of the officers involved in Johnson's arrest were charged. Neither did the city voluntarily settle the family's claim. At a civil trial, jurors found two cops negligent, a third grossly so, and awarded Johnson's family \$7.4 million. In 2012 [an appellate court](#) agreed with the verdict but invoked statutory limitations that reduced the award to \$219,000.

More recently, in June 2012, officers arrested Christine Abbott during an altercation at her residence. Here is an extract from [her lawyers' account](#) of what happened next:

Officers then forcefully threw Abbott into the back of a police van. Police did not strap or harness Abbott into the back of the police van, nor was a seatbelt used...The Officer controlling the van maniacally drove Ms. Abbott to the police station, during which time Ms. Abbott's person was violently tossed around the

interior of the police van...Abbott sustained physical injuries as well as mental and emotional injuries...She has difficulty expressing the fear and humiliation that she was subjected to by the Police, but says that she felt “less than human” when she was thrown into the police van and “treated like cargo.”

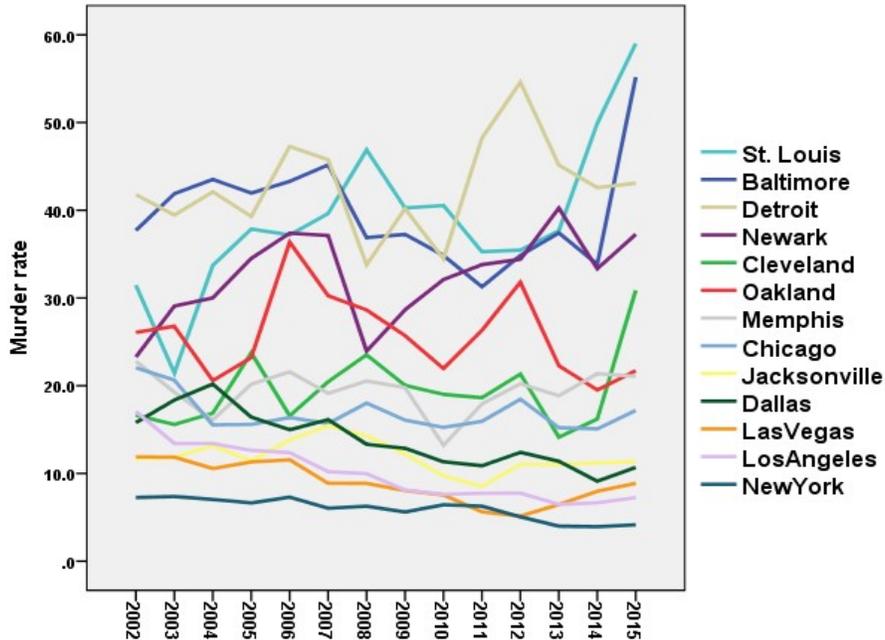
Abbott’s lawsuit [was settled in October 2015](#) for \$95,000.

And then there’s the disturbing episode of [Jeffrey Alston](#), a 32-year Baltimore man who wound up a quadriplegic in 1997 after Baltimore cops arrested him for drunk driving. Like Freddie Gray, Alston also suffered a broken neck. Unlike Gray, Alston claimed it happened when officers manhandled him during arrest. Police, on the other hand, [insist that he self-inflicted his injuries](#) during transport, by purposely head-butting the van’s interior walls. In 2004 a civil jury decided that Alston’s account was correct and awarded him \$39 million; he settled for \$6 million that December. Alston died from complications less than a year later.

Back to Freddie Gray. Given the tenor of the times, one might attribute his alleged mistreatment to racial animus. After all, Gray was black. But so are three of the six cops charged in the case, including officers Porter and Goodson. (In 2013, [40.3 percent](#) of Baltimore’s approx. 3,000 cops were black.) Baltimore’s chief prosecutor, Marilyn Mosby, is also black, as is mayor Stephanie Rawlings-Blake. So was police commissioner/chief Anthony Batts, who was fired three months after Gray’s death and replaced with the current head, Kevin Davis (he is white.)

Still, unless we choose to bury our heads in the sand (actually, ostriches don’t) it’s painfully clear that Baltimore PD has problems. What to do? Shortly after the Gray episode, Mayor Rawlings-Blake [asked the Justice Department](#) to look into the troubled agency. DOJ promptly [opened a “patterns and practices” investigation](#). That’s still a work in progress. Meanwhile Baltimore PD just rewrote its [use of force policy](#). It emphasizes “sanctity of life” and the duty to render aid and urges cops to “de-escalate” incidents whenever possible. (For more on that trendy approach click [here](#).)

Baltimore has always featured prominently in our blog. During the 2008-09 recession we reported that declines in manufacturing may have led to increased crime in the industrial centers of the Northeast, Baltimore included (click [here](#) and [here](#)). But while the city’s economy has substantially recovered – its [present unemployment rate](#), 4.3 percent, is actually a notch under the national average of 4.5 – violence remains stubbornly high. According to a [Brennan Center](#) analysis of crime in the nation’s thirty largest cities, Baltimore’s 2015 violent crime rate of 1,550.6 was second only to notorious Chicago’s. (And by “second” we mean second worst.) Baltimore [also came in number two](#) in the murder sweepstakes, slightly behind homicidal St. Louis.



Nine years ago [one of Police Issues' first posts](#) addressed problems besetting its hometown agency, LAPD, whose reputation had been thrashed by the [Rodney King beating](#) and the [Rampart Scandal](#). Instead of simply turning to the usual correctives (e.g., supervision, training, discipline) we suggested a different approach:

In fractured Los Angeles, reeling from economic disparity, a large, restless underclass, a decaying infrastructure and grossly underfunded schools and public services, cops face inordinate challenges. And the demands keep piling on...Unreasonable demands set up cops to fail. They also ignore the fact that in most cases it is citizen behavior that needs to be “reformed”. Spend a few months on the street taking calls, and you will be convinced that we might carry Palm-Pilots in our pockets, but we are Cro-Magnons at heart. If we want kinder and gentler cops, we need kinder and gentler citizens.

While the iPhone has supplanted the “Palm-Pilot,” our entreaty still applies. Given what’s “going down” on the streets of Baltimore, the stresses of policing may well have spawned a culture of disrespect towards anyone not wearing blue. To be sure, the new chief is presumably trying to instill or re-awaken a lost sense of craft (for more about that critical notion click [here](#).) And there are likely some “bad apples” who may need to be culled from the ranks. Yet, [as we recently suggested](#), reforming cops who labor, day in and day out, in an environment of unrequited violence may prove an exercise in frustration:

But when gangsters rule the streets, restraint – that valuable commodity that cops in more favorable climes exercise every day – goes out patrol car windows. We can threaten, train and reorganize until the cows come home, but reform can't take hold in an atmosphere of unrequited violence. When officers are enveloped by disorder, the craft of policing is a lost cause.

When we mentioned “something peaceful yet emphatic, perhaps along the lines of Black Lives Matter but aimed within” we were blogging about Chicago. Imagine our surprise when a comparable approach was proposed by Munir Bahar, a notable Baltimorean and leader of the “300 Men March,” an organization of black residents [who regularly stage anti-violence demonstrations](#) in the besieged city. [Interviewed soon after the June 25 assassination of Baltimore rapper “Lor Scoota,”](#) his words resonate with the authority that only comes through personal experience:

Where's the professional men, where's the black intellectuals, the educated folks who have degrees? How come you can't fix your own damn community?

And to that, what can one add but “Amen!” Still, as we pointed out in “Location, Location, Location,” crime is a matter of place, and that “place” is typically economically disadvantaged. That's not where “professional men,” “intellectuals” and “educated folks,” black or white, tend to reside. So we need a way for the overwhelmingly decent and law-abiding citizens who *do* live in these places – these *neighborhoods* – to take them back from the thugs. Figuring out just how police and others can help remains very much a work in progress.