After Freddie Gray: looking to the future

Op-ed: Community engagement in the future of law enforcement in Baltimore is at its most critical point.

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Last year as charges were announced against six Baltimore police officers for their role in the arrest and fatal injuries sustained by Freddie Gray, it seemed to many like a case in which police officers would finally be held accountable for the in-custody death of an unarmed black man.

Key facts were clear: An unarmed, skinny, relatively healthy 25-year-old black man was arrested without cause, and had his spine broken and voice box crushed while handcuffed in the back of a police van in West Baltimore, dying a week later. When an EMT worker arrived at the scene and saw Gray, she said to the police officers transporting the young man, "what the [expletive] did you guys do?" She testified that

This video contains FBI surveillance footage from April 29, 2015, two days after the unrest that unfolded following the death of Freddie Gray. (Courtesy video)

By Sherrilyn A. Ifill
Gray's neck "felt like a bag of rocks."

Even the demographics seemed to favor accountability in this case. This would not be a case of an all-white justice system exonerating white police officers. The officers involved in arresting and transporting Gray were both black and white; one is a woman. The police chief, the prosecutor and the city mayor were all African American at the time of the incident, and the population of Baltimore City, from which the jury in the case would be drawn, is majority African American.

Yet it is now certain that no one will be held criminally liable for Gray's death.

Marilyn Mosby, the Baltimore State's Attorney who so dramatically announced charges against the officers a year ago, explained her failure to obtain a conviction on any of the charges after four trials with the same kind of aggressive, uncompromising presentation that has become her signature. The Baltimore City police union — elements of which have caricatured Mrs. Mosby as an odious anti-cop crusader — has responded by threatening to sue her, calling for her disbarment and elevating the battle of words. Police Commissioner Kevin Davis, who replaced Anthony Batts after Gray's death, has initiated an "administrative review" of the conduct of the officers who arrested and transported Gray to determine if they should face internal discipline; that review will be conducted by police departments of neighboring counties — suggesting to some that its result is a foregone conclusion.

There were no sustained protests or visible unrest in Baltimore after Ms. Mosby's announcement dropping all remaining charges against the officers, but that should not be confused with the community's acceptance of the decision or even apathy. The silent seething anger and cold resignation of Baltimore's African American community are considerably more harmful to the city's future than the burning of a pharmacy in last year's unrest. Baltimoreans and indeed people all over the country are outraged, or even worse resigned, to the belief that our justice system is irretrievably broken. Our leaders fiddle while confidence in our justice system burns.

This is dangerous because we are precisely at the moment when community engagement in the future of law enforcement in Baltimore is most critical and has the greatest potential to result in lasting change. If we are to find a way forward, community groups and leading institutions in our city must prepare now to marshal resources and strategic engagement on several key fronts.

**Police reform**

Policing in Baltimore is already undergoing change; those changes will be even more radical when the Department of Justice completes its "pattern and practice" investigation and presents its proposed consent decree later this summer. The community will have an opportunity to weigh in on the proposed decree at a fairness hearing convened by a federal judge. It is critical that community groups begin
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preparing now to participate in that process. Then, as just happened in Ferguson, a federal monitor will be selected to ensure that the new regime required by the decree is undertaken. Here again, community should weigh in to assist in identifying a monitor who has the capacity to manage this process, along with the ability and willingness to work with the community.

Once the decree is accepted by the federal court, the monitoring process itself will require sustained and consistent engagement by the community to ensure that the elements of the decree are truly implemented and that real, substantive change happens. This does not mean showing up at one or two meetings. Instead, organized community groups will need to hold the police department and the city's feet to the fire over the course of years, through successive commissioners and mayors. Our universities and local foundations should be preparing right now to support and provide an infrastructure that will equip community groups to play a sustained role in this process.

Challenging the leadership and management practices in the police department is also a critical part of reform. This kind of internal reform is unlikely to be touched by the Department of Justice consent decree. Police commissioners (and we have had seven since 2000) must be held to high standards for properly screening and hiring officers and for their supervision and discipline — including swift removal of officers who violate standards. The police union contract currently under negotiation should be scrutinized to ensure that police commissioners have the latitude they need to carry out this duty. Civil rights groups have submitted a letter to the mayor suggesting key areas for scrutiny and change in the proposed contract.

**Prosecution reform**

None of the officers charged in the Freddie Gray killing were convicted of even the relatively minor crime of misconduct in office. For this stunning outcome, Ms. Mosby contends that the investigation into Gray's killing was compromised by police very early-on. It remains a mystery why, if this is true, she didn't ask the state attorney general or even the Department of Justice to take over the investigation early on.

I have no reason to disbelieve Ms. Mosby's account that she was ill-served by the police in this case. But having revealed in dramatic detail this conduct during her press conference, Baltimoreans should expect that she has reached out to the Department of Justice to assist with bringing obstruction of justice charges against the officers. As far as we're aware, she has not.

In addition, the prosecutor's office must also be subject to reform for its role in the public's lack of confidence in the city's justice system, which did not begin after all, with Gray's death. Ms. Mosby correctly identifies the reality that an independent investigatory body is needed to investigate cases of police-involved killings. But this stops far short of what is needed to ensure that justice is done in cases
of police-involved killings and to promote public confidence in the prosecution of these cases. Independent special prosecutors are required in such instances.

The community's principal concern with our justice system is not how cops are treated, but how average citizens subject to stop and arrest are treated in our justice system. Thus, Ms. Mosby should continue looking at her own office for opportunities for reform. The Department of Justice has introduced "smart on crime" measures — instructing U.S. attorneys to cease overcharging or stacking charges in cases involving non-violent crimes. Ms. Mosby's office should consider adopting similar policies for her prosecutors. Bias training for prosecutors should also be mandatory. The Department of Justice recently committed itself to requiring bias training for all of its FBI officers, U.S. attorneys and department attorneys. Prosecutors' offices in Milwaukee and Manhattan are requiring bias training for their managers. There is no reason that Baltimore and its surrounding counties cannot do the same. And this bias training should extend to every judge in our city as well.

Commitment to change

In an interview with The Sun explaining her decision to try these cases despite a flawed investigation, Ms. Mosby has suggested that she pressed ahead with the prosecution of the officers "to expose the inequities" in the system. But the inequities in our justice system were apparent long before Freddie Gray was killed, and it is not the job of the state's attorney to confront these inequities alone. The issues above are just a tip of the iceberg. Bail reform, conditions in our jail and prison facilities, and collateral consequences of criminal convictions are just some of the other "inequities" that we must address.

What we need now is the willingness of the city's law enforcement leaders, prosecutors, the new mayor, judges, educational institutions and, most importantly, members of the community to make the reformation of our justice system a priority. The crisis of confidence in our justice system cannot continue without doing fundamental damage to the future of our cities and our nation. We must channel our anger, our grief, our frustration into a collective and urgent commitment to make real change happen.

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