

STATE OF MARYLAND

v.

CAESAR GOODSON

GARRETT MILLER

EDWARD NERO

WILLIAM PORTER

BRIAN RICE

ALICA WHITE

Defendants

\* IN THE  
\* DISTRICT COURT  
\* FOR  
\* BALTIMORE CITY

\* CASE NO. 6B02294452

\* CASE NO. 3B02294449

\* CASE NO. 4B02294450

\* CASE NO. 0B02294453

\* CASE NO. 2B02294448

\* CASE NO. 5B02294451

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**JOINT MOTION TO DISMISS AND IN THE ALTERNATIVE FOR RECUSAL OF  
BALTIMORE CITY STATE'S ATTORNEY'S OFFICE**

Defendants, Caesar Goodson, Garrett Miller, Edward Nero, William Porter, Brian Scott Rice and Alicia White, by respective undersigned counsel, hereby file this Joint Motion to Dismiss and, in the Alternative, for Recusal of the Baltimore City State's Attorney's Office in the prosecution of each of their respective cases and in support thereof states:

**INTRODUCTION**

On May 1, 2015, in the face of the threat of continued riots, protests, a city curfew, and civil unrest, the State's Attorney for Baltimore City, Mrs. Marilyn Mosby publicly and with inciting rhetoric announced at a press conference that she had filed criminal charges against Caesar Goodson, Garrett Miller, Edward Nero, William Porter, Brian Scott Rice and Alicia White<sup>1</sup>, all

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<sup>1</sup> In the haste to file charges, a different "Brian Rice" and a different "Alicia White," who never had any interaction with Mr. Gray and are not law enforcement officers, were mistakenly charged with crimes including manslaughter,

employees with the Baltimore City Police Department. These charges included second degree murder, manslaughter, assault, misconduct in office, and false imprisonment.<sup>2</sup> The charges were based upon events which occurred on April 12, 2015. In unprecedented detail, the State's Attorney read word for word the Statement of Probable Cause to the public. Near the conclusion of her press conference, Mrs. Mosby herself directed a "message" to the world: "To the people of Baltimore and the demonstrators across America, I heard your call for 'no justice no peace.' Your peace is sincerely needed as I work to deliver justice on behalf of this young man ... [T]o the youth of the city. I will seek justice on your behalf. This is a moment. This is your moment. Let's insure we have peaceful and productive rallies that will develop structural and systemic changes for generations to come. You're at the forefront of this cause and as young people, our time is now." This was not the first nor only statement revealing the State's Attorney's political and personal motivation, betraying the United States Constitution, the Maryland Declaration of Rights and the Maryland Rules of Professional Responsibility.<sup>3</sup>

The 14<sup>th</sup> Amendment to the U.S. Constitution guarantees all citizens protection from overzealous prosecution, stating in relevant part, "No state shall...deprive any person of life, liberty, or property, without due process of law." The Maryland Declaration of Rights, Art. 24 also states clearly, "[t]hat no man ought to be taken or imprisoned or disseized of his freehold,

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assault, false arrest, and misconduct in office. Because Defendant Brian Scott Rice and Alicia White turned themselves in, the arrest warrants for Mr. Brian Wesley Rice and the incorrect Mrs. Alicia White were not executed. The error in the identification was on the charging documents prepared by the Sherriff's Department and adopted by the State's Attorney in her press conference. This was not a clerical error, but rather an outright error by those who were responsible for charging the Defendants.

<sup>2</sup> Garrett Miller and Edward Nero were charged with second degree assault, false imprisonment and misconduct in office. William Porter and Alicia White were both charged with manslaughter, second degree assault, and misconduct in office. Brian Scott Rice was charged with manslaughter, second degree assault, misconduct in office, and false imprisonment. Caesar Goodson is charged with second degree depraved heart murder, manslaughter, second degree assault, and misconduct in office.

<sup>3</sup> See, e.g., "[T]he people of Baltimore City elected me as the State's Attorney to apply justice fairly and equally to violent repeat offenders and individuals who go and usurp their authority as police officers." Interview with Don Lemon, CNN (May 1, 2015).

liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.” This constitutional overlay has been influential in developing further guidelines and rules of professional conduct for prosecutors and other attorneys. The Maryland Rules of Professional Conduct outline the manner by which attorneys must purport themselves in the legal arena. Specifically, there are special rules regarding the manner by which prosecutors must conduct themselves and rules governing conflicts of interest.<sup>4</sup> In Maryland, we hold prosecutors to a higher standard for a reason – an individual’s constitutional rights hang in the balance and the prosecutor must uphold those rights, even in the face of political and personal pressures. For the reasons discussed below, each of these principles outlined above have been egregiously violated by the State’s Attorney for Baltimore City.

Rarely in the history of any criminal case has a prosecutor so directly maintained so many conflicts of interest. Rarer still are instances where such clear conflicts exists and a prosecutor steadfastly refuses to recuse him or herself.<sup>5</sup> These conflicts include the following: (1) the seizing of political and personal gain by Mrs. Mosby and her husband; (2) personal relationships with individuals who will be witnesses at trial; (3) the role of her office as the “investigators” for this case; (4) the pending civil claim against Mrs. Mosby and her office; and (5) the financial interest of the attorney for the family of Freddie Gray, a close friend, financial supporter and attorney for Mrs. Mosby.

There is no better evidence demonstrating these conflicts than the charging documents themselves. At best, the charges levied against these officers are extraordinary prosecutorial overreaching. At worst, they are something far more nefarious.

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<sup>4</sup> See, e.g. MD. R. CTS. J. AND ATTYS Rule 16-812, MRPC 1.7, 3.6, 3.8.

<sup>5</sup> See, e.g., In response to a question as to her response to a request that she recuse herself, Mrs. Mosby responded, “I think that’s absurd.” Interview with Don Lemon, CNN (May 1, 2015).

The conflicts presented by the State's Attorney's Office are deep, are real, and are imminent.

This motion is being filed at this junction because the Defendants have grave concerns about the charging decisions which will be made in the near future and their ability to receive due process of the law. Before this case proceeds further, the Defendants would respectfully request this Honorable Court to recuse the State's Attorney and either dismiss the case, such that an independent prosecutor, appointed by the court can make any further charging decisions, or appoint an independent prosecutor to decide how the case should proceed.

### FACTS

The salient facts of this Motion will be set forth in further detail in the Argument section of this Motion. However, a brief overview of the facts surrounding this incident is necessary to set the appropriate stage.

On May 1, 2015, a Major from the Baltimore City Sheriff's Department signed, under oath, an Application for Statement of Charges against each of the above-referenced individuals. The charges ranged from second degree murder to a myriad of misdemeanor offenses. The charges all relate to the alleged apprehension of Freddie Gray on April 12, 2015. It is apparently the position of the State's Attorney's Office that the original investigating officers lacked probable cause to arrest Mr. Gray, as the knife for which he was arrested was "lawful under Maryland law." (See Attached Exhibit 1, Statement of Probable Cause against Garrett Miller; it is believed that this Statement is identical for each of the Defendants). No allegation of force was alleged in the charging documents. It is not the position or averment of the State that any police officer beat Mr. Gray, or used excessive force upon him. Rather, it is simply the position of the State's Attorney that the original arrest was unlawful, as the knife was "lawful under **Maryland** law" (emphasis

added) and that the ensuing events (i.e. not seat belting Mr. Gray and not providing him with medical assistance) flowed from the initial unlawful arrest. Of significance to this Motion, there was one individual in the back of the van with Mr. Gray during a portion of the events, Donta Allen.

Unfortunately for the State, Mr. Gray was not arrested and charged with violating Maryland law. Rather, Officer Garrett Miller arrested and charged Mr. Gray with violating Section 19.59.22 of the Baltimore City Code.<sup>6</sup> It should be noted that the City Code is far broader in its prohibitions than Maryland law. This pivotal distinction was omitted from the Statement of Charges sworn out by the Sheriff's Department. This distinction was similarly omitted from the Statement of Probable Cause read to the cameras by Mrs. Mosby. If in fact, the knife was unlawful, or one was reasonable in a belief that it was, the foundation of the State's argument collapses. If the knife was actually illegal, it stands to reason that the very people who charged these Officers would then be guilty of false imprisonment of each of the Officer-Defendants, by virtue of the logic employed in the State's charging decisions. It should be noted that counsel for Defendants Miller and Nero (the two officers with pending District Court trial dates) have requested to see the actual knife on multiple occasions. Each of these requests have been denied.

On May 7, 2015, a Notice of Tort Claim was filed with the Mayor and City Council of Baltimore and the State of Maryland, placing the City and State on notice that the above-referenced officers intend to pursue a claim against Mrs. Mosby and those responsible for charging this case, as the charging documents contain errors and omissions that resulted in the unlawful arrest and

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<sup>6</sup> "Switch-blade knives. (a) Possession or sale, etc., prohibited. It shall be unlawful for any person to sell, carry, or possess any knife with an automatic spring or other device for opening and/or closing the blade, commonly known as a switch-blade knife. (b) Any person violating the provisions of this section, shall, upon conviction thereof, be fined not more than \$500 or be imprisoned for not more than 1 year, or both, in the discretion of the court." BALTIMORE, MD., CODE art. 19, § 59-22; See Attached Exhibit 2, Statement of Charges for Freddie Gray.

detention of all six of the officers. (See Attached Exhibit 3, Tort Claim & Public Information Act Requests).

Mrs. Mosby publically contends that the charges were levied against these Police Officers after a thorough and independent investigation conducted by her office. It is the position of the Defendants that the charges against them are baseless and that there are material false statements and omissions contained in the Statement of Charges. Mrs. Mosby's office performed the investigation, and as such, the employees and agents of her office have become the central witnesses to this case.

As discussed in detail below, the chief prosecutor of this case is in a relationship with a local television news reporter. That reporter conducted an "exclusive" interview with Donta Allen on May 1, 2015. The story that Mr. Allen told this reporter is key to the defense of this case and is substantively different in certain respects from the story that he told the original police investigators, as detailed in a search warrant executed earlier in the investigation of this matter. As such, the reporter is also a witness to this case.

As further discussed below, Mrs. Mosby's husband is a councilman for the very district where these events occurred; her inciting rhetoric in this case reveal clear extra-prosecutorial motivations and ambitions.

Finally, Mrs. Mosby's personal and professional relationships with the Gray family attorney, William Murphy, cast a shadow over the prosecution and all charging decisions. As discussed in detail below, Mr. Murphy is not only a mentor and financial supporter of Mrs. Mosby, but, also her attorney.

It should be noted that yesterday, in a separate and unrelated matter to this one, a similar Motion to Recuse Mrs. Mosby from Prosecution was filed on the grounds that her relationship

with William Murphy unfairly biased the outcome and status of that case. It was alleged in that Motion that two Defendants (both also police officers) were charged with identical criminal charges based on identical facts. It was alleged that on the day Mrs. Mosby was sworn into office, she entered a *nolle prosequi* (dismissal) against Mr. Murphy's client. A copy of that Motion is attached as Exhibit 4.

Each of these conflicts, separately and individually, as well as the statements made by Mrs. Mosby to the public, in her capacity as the State's Attorney for Baltimore City, demand recusal.

### ARGUMENT

A State's Attorney's "decision to prosecute, just like the methods [s]he employs to procure conviction, must be in accord with the fair and impartial administration of justice, untainted by any contaminating influence." *Sinclair v. State*, 278 Md. 243, 260 (Md. 1976). The *Sinclair* court further stated, "if a prosecutor has, or would clearly appear to a reasonable person having knowledge of the pertinent facts to have, any pecuniary interest or a significant personal interest in a civil matter which may impair [her] obligation in a criminal matter to act impartially toward both the State and the accused, then [s]he is, on the basis of this State's public policy, disqualified from initiating or participating in the prosecution of that criminal cause." *Id.* at 254.

The *Sinclair* Court went on to hold that the following reasoning was apt:

The principle long ago was recognized that no man can adequately or properly serve two masters, and this is the chief subject matter of Canon 6 [(now Canon 5)] of the Canons of Professional Ethics. It is inconsistent with the public interest and welfare for any law enforcement officer directly or indirectly to represent any person involved in a criminal matter, except the State, or receive any personal profit or gain as the result of the arrest, conviction or acquittal of one charged with the infraction of the law or in connection with the filing of any such charge. . . . The books are replete with cases indicating that any appearance of evil in connection with the administration of public office should and must



be avoided; and particularly is this true of those offices involved in the enforcement of the law.

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To permit a prosecuting attorney to have an interest of any nature whatsoever in any civil proceedings, directly or indirectly, and which proceedings involve similar facts or the same subject matter as a criminal prosecution then pending or thereafter initiated, can only give rise to suspicion concerning and relating to the motives of the prosecuting attorney involved, and bring such office into disrepute with the public.

*Id.* at 255-256 citing *State v. Detroit Motors*, 62 N.J. Super. 386, 163 A. 2d 227, 229-31 (L. Div. 1960).

Maryland has also statutorily addressed the inherent need for prosecutors to be held to higher standards. Section (a) of Rule 3.8, Special Responsibilities of a Prosecutor, indicates that a prosecutor in a criminal case shall "refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause." Further, section (e) states in relevant part that the prosecutor shall "refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused." These special responsibilities of a prosecutor are in addition to Rule 3.6, which applies to all attorneys in the context of trial publicity. Section (a) of Rule 3.6 states,

[a] lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

Both the spirit and law of *Sinclair* as well as the statutory rules outlined above have been egregiously violated by the Baltimore City State's Attorney's Office. As such, this Honorable Court should grant this Joint Motion to Dismiss and, in the Alternative, for Recusal of the



Baltimore City State's Attorney's Office in the prosecution of each of the Defendants' respective cases.

**I. THE RELATIONSHIP BETWEEN MARILYN MOSBY AND NICK MOSBY CAUSES AN UNAVOIDABLE CONFLICT.**

Standard 3-1.3(f) of the ABA General Standards for the Prosecution Function identify the basis for the Defendants' assertion that Mrs. Marilyn Mosby's relationship to Mr. Nick Mosby, and the respective roles that they play in the political community of Baltimore City, establishes a basis for Mrs. Mosby (and the Office of the State's Attorney for Baltimore City) to be disqualified from prosecuting the cases of the above-referenced defendants, officers of the Baltimore City Police Department.

Standard 3-1.3 (f) Conflicts of Interests states: "A prosecutor should not permit her professional judgment or obligations be affected by his or her own political, financial, business, property or personal interests."

Marilyn Mosby, State's Attorney for Baltimore City, is married to Nick Mosby, Councilman for the 7<sup>th</sup> District of the Baltimore City Council. Mr. Mosby's district includes many of the neighborhoods effected by the civil unrest and rioting that occurred in the City of Baltimore after the death of Freddie Gray. A review of the Baltimore City Council Webpage, and specifically, a review of the 7<sup>th</sup> District Communities<sup>7</sup> that are geographically located within the confines of the 7<sup>th</sup> Council District, discloses that the Committees and Associations that are in that District include:

Mondawmin Merchants Association  
Mondawmin Neighborhood Improvement Association, Inc.  
Nehemiah Homeowner's Association of Sandtown-Winchester  
Penn-North Nehemiah Homeowners' Association Penn-North  
Revitalization Corporation Pennsylvania Avenue Merchants  
Association

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<sup>7</sup> See Attached Exhibit 5, Map of the City of Baltimore 7<sup>th</sup> Council District and a listing of the 7<sup>th</sup> District Communities.

Pennsylvania Avenue Redevelopment Collaborative Sandtown-  
Habitat Homeowners' Association  
Sandtown-Winchester Community Building in Partnership  
Sandtown-Winchester Improvement Association

Undersigned counsel believes that this Court can take judicial notice of the fact that the neighborhoods set forth above were harshly impacted and considered "Ground Zero" for the violent turbulence that took place after the death of Freddie Gray. The images of these communities were projected in every local and national media form and medium that covered the violence that emptied in Baltimore City. All communities that are within the confines of the 7<sup>th</sup> District are home to the constituents of Mr. Mosby. He clearly had a professional and personal interest in the need to eliminate the rioting and destruction of the property in his Council District. Likewise, his wife, Marilyn Mosby, had a professional and personal interest in accommodating the needs of her husband - his political future directly affects her personal, professional and political interests.

The need to quell the raging inferno of human rage and revulsion within the confines of the 7<sup>th</sup> District was emergent. Failure to put an end to the destruction of property and the ongoing violence would lead to greater degradation of a community that had existing systemic problems within the community. Mr. Mosby's relationship with the State's Attorney for Baltimore City placed him in a unique position to influence the decision of an elected official who was susceptible to be influenced in choosing to file criminal charges against the defendants in this matter. It is inconceivable that Mrs. Mosby was not influenced by the challenges presented to her husband as a community leader of neighborhoods that were literally "up in flames."

The preservation of prosecutorial impartiality is perhaps most important during the charging process, the phase of a criminal proceeding when the prosecutor's discretion is most apparent. The theme which runs throughout the criminal procedure process in this country, and in this State, is that all persons should be protected from having to defend against frivolous

prosecutions, and that one major safeguard against such prosecutions is the function of the State's Attorney in screening criminal cases prior to instituting prosecution. Surely, an essential aspect of this safeguard must be the prosecutor's freedom from any personal or emotional involvement in a controversy which might bias her objective exercise of judgment.

Chants of "no justice, no peace, no racist police" were heard throughout the streets of Baltimore before (and after) Mrs. Mosby elected to hastily announce that she determined that it was appropriate to charge the above-referenced defendants with criminal acts.

Soon after a Major of the Baltimore City Sheriff's Office appeared before a District Court of Maryland Commissioner seeking the issuance of arrest warrants for the six officers who are the defendants in this matter, Mrs. Mosby held a press conference. At this press conference Mrs. Mosby proclaimed that she brought criminal charges against the officers to show not only the people of Baltimore, but also "the demonstrators across America" that "I heard your call for 'no justice, no peace'" and proceeded to move forward with the politically motivated prosecution of the six officers who have served the City of Baltimore as proud police officers. As a result, these officers soon found themselves offered up to the masses by Mrs. Mosby to quell the uprising that caused the most harm to the District where her husband is the City Council representative.

The National District Attorneys Association National Prosecution Standards offers guidance to prosecutors in the execution of their duties. In the introduction to the Standards, it is stated that, "These standards are intended to be an aspirational guide to professional conduct in the performance of professional function. Unless otherwise indicated, they are intended to apply to the chief prosecutor (by whatever title) in any office, as well as to deputy and assistant prosecutors."

Standard 1-3.3(d) appears to be somewhat similar to the ABA Standard, but offers stronger language in encouraging a prosecutor to recuse himself or herself from involvement in a matter that may have the appearance of a conflict of interest. Specifically, the Standard states, "The prosecutor should excuse himself or herself from any investigation, prosecution, or other matter where personal interests of the prosecutor would cause a fair-minded, objective observer to conclude that the prosecutor's neutrality, judgment or ability to administer the law in an objective manner may be compromised."

The language used by the National Association of District Attorneys in offering guidance to prosecutors in regard to determining when it is appropriate to remove oneself from the prosecutor function as it relates to an investigation or prosecution that may be influenced by a personal matter is clear, and direct. Any fair-minded, objective observer would conclude that Ms. Mosby's neutrality, judgment and ability to administer the law in an objective manner was, and is, compromised by her relationship to Nick Mosby, and his position as a 7<sup>th</sup> District Councilman. Ms. Mosby must recognize this conflict, and make the ethically appropriate decision in regard to the conflict caused by her marriage to 7<sup>th</sup> District Councilman Nick Mosby. She must remove herself and her office from the prosecution of this matter.

**II. THE BALTIMORE STATE'S ATTORNEY'S OFFICE SHOULD BE RECUSED BECAUSE OF PERSONAL RELATIONSHIPS BETWEEN A KEY PROSECUTOR IN THEIR OFFICE AND AN INDIVIDUAL WHO WILL BE A WITNESS AT TRIAL.**

Counsel for Defendants demand that Mrs. Mosby recuse herself and her Office from the above-captioned cases in light of the inherent and overly prejudicial conflict raised by the lead prosecutor's relationship to a potentially vital witness who is also a key member of the local media. Jan Bledsoe, Esq., Deputy State's Attorney and lead prosecutor for the State, is in a relationship

with Jayne Miller, an investigative reporter for WBAL-TV. This relationship was confirmed by Jayne Miller to the Baltimore Sun, as recently as Friday, May 1, 2015.

On April 27, 2015, a search warrant was executed on the home of Officer Caesar Goodson. According to the affidavit attached the search warrant, Donta Allen, the only other person in the back of the van with Mr. Gray during the ride, indicated to homicide detectives on the day of Mr. Gray's arrest that, in his opinion, "Mr. Gray was trying to hurt himself." (See Attached Exhibit 6, Search Warrant).

On April 29, 2015 the Washington Post reported that a second passenger was in the van with Freddie Gray and according to a source, the passenger heard Gray "banging against the walls" of the van and described what he believed was Gray "intentionally trying to injure himself." The Post article referenced the Search Warrant but omitted Mr. Allen's name, citing concerns over his safety.<sup>8</sup>

On April 30, 2015, Jayne Miller of WBAL presented an exclusive interview with the second passenger, Donta Allen. When interviewed by Jayne Miller of WBAL, the individual who was in the van with Mr. Gray somewhat retracted his earlier statement. He now stated that he heard "light banging" and that he "never ever said to police that [Gray] was hurting himself." During this interview with Ms. Miller, Allen described a barrier which divided the rear of the van into two sections and as such, Allen stated that not only did he not see Gray, or realize there was a second passenger, but that "there's no place where a man can hurt himself in there."

After Jayne Miller's interview with Donta Allen, it became clear that Mr. Allen's story had changed. Accordingly, Ms. Miller necessarily becomes either a substantive witness or an

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<sup>8</sup> After Mr. Allen's interview with Jayne Miller, the Washington Post did go on to release his name.

impeachment relative to the veracity and detail of Mr. Allen's story. There is simply no way around this conflict.

It is unclear *how* Jayne Miller of WBAL learned the identity of the otherwise anonymous passenger. However, the fact remains that Ms. Miller interviewed Mr. Allen prior to Mrs. Mosby and Ms. Bledsoe filing criminal charges against the defendants and prior to the results of the police investigation being turned over to the State's Attorney's Office. That interview, therefore, presumably was considered in the decision by the State's Attorney's Office to have charges filed. The conflict is truly problematic in that Mr. Allen presented a different version of events that is more beneficial to the State's theory of the case in speaking with Ms. Miller. Thus, Defendants would have an opportunity to examine Ms. Miller as to the nature of her conversations with Mr. Allen prior to his interview, any statements he said while not being recorded, and any statements he made as to why he had varying accounts of key testimony in the case. Ms. Miller may also need to testify as to the authenticity of the recording of Mr. Allen. Ms. Miller and her notes have already been requested and subpoenaed by Defense counsel.

In further recognition of the inherent conflict, on May 5, 2015, Jayne Miller stated, "I'm actually going to be covering less of [the Freddie Gray case], because I have a personal connection to one of the prosecutors." Counsel for Defendants avers that this conflict has created the need for the parties involved thus far to recuse themselves. As others, including Jayne Miller herself, have recognized this conflict of interests and recused herself, Mrs. Mosby should also recognize this undisputed conflict and recuse herself from any further prosecution in the above-captioned cases. This conflict is real and undeniably intertwined with the prosecution and charging decisions of this case.

### **III. THE BALTIMORE CITY STATE'S ATTORNEY'S OFFICE SHOULD BE RECUSED BECAUSE OF THE STATE'S ATTORNEY'S OFFICE'S**

## **INDEPENDENT INVESTIGATION, DISREGARDING THE BALTIMORE POLICE DEPARTMENT INVESTIGATION.**

The conflicts with Mrs. Mosby's office extend well beyond the conflict of her chief prosecutor and a witness. The conflicts involve the entirety of her investigation and the necessity of calling all "investigators" as witnesses. Mrs. Mosby has publicly stated that the Baltimore State's Attorney's Office has conducted its own independent investigation, under her supervision, apart from the Baltimore City Police Department investigation. Specifically, she has stated in her press conference held on May 1, 2015,

"I thought it was very important to have an independent analysis as to what took place and transpired from the very beginning. We are independent agencies from the police department. We've been working independently. And I can tell you that we put all of our resources to make sure that we were pursuing and leading where the facts took us in this case, which was to pursue justice. I can tell you that from day one, we independently investigated. We're not just relying solely upon what we were given from the police department, period."

In an interview following the press conference, Mrs. Mosby publicly addressed the investigation further stating,

"I can tell you, as I stated, *we had a number of investigators*. You can see it's been an all-hands-on approach from the very beginning. So, I sent *my investigators* out to the scene. *We have a number of them who are right here...* So, yes, we have leveraged the police investigation, but at no point did we compromise *our own independent investigation* into this case." (emphasis added)

Mrs. Mosby's statements are telling in that she repeatedly refers to and implies that the investigators assigned by the Baltimore State's Attorney's office are under her control. She refers to them possessively because they are her subordinates and subject to her supervision and management.



The fact that these investigators are controlled by Mrs. Mosby creates a clear and undeniable conflict of interest. These investigators will necessarily be called to testify as a result of the defendant's right to attack the investigation conducted by the Baltimore State's Attorney's Office. As Mrs. Mosby is in a supervisory role, these investigator witnesses are at her mercy in terms of their at-will employment status. As a result, these witnesses cannot possibly be expected to testify without undue influence. They undoubtedly know that their testimony may be central to the trial strategy and clear need of their employer to obtain a conviction of the defendant. As such, their testimony will be unduly influenced by a desire to maintain employment with the Baltimore City State's Attorney's Office.

When the State's Attorney assumes the role of the investigator, her office becomes the witness. In order to appropriately defend this case, the defense will be required to attack the investigation, as it was erroneous, egregious, and deeply flawed. This attack will necessarily require subpoenaing and calling as witnesses many of Mrs. Mosby's employees. It cannot be said that this does not present a conflict of interest with her office. This is precisely the reason for separation of the police department and State's Attorney's Office. Here, the State's Attorney Office has created an indisputable conflict, simultaneously taking on the role of police, prosecutor, and witness.

**IV. THE BALTIMORE CITY STATE'S ATTORNEY'S OFFICE SHOULD BE RECUSED BECAUSE STATE'S ATTORNEY MOSBY HAS A DIRECT FINANCIAL AND PROFESSIONAL INTREST IN THE OUTCOME OF THE CASE.**

On May 7, 2015, a Tort Claims Notice was served upon both the City of Baltimore and the State of Maryland alleging that false and misleading statements and omissions in the Statement of Probable Cause resulted in the unlawful arrest and detention of each of the six police officers involved in this matter. It was alleged in the Tort Claims Notice that, amongst various other issues,

the legality of the knife and the law under which Mr. Gray was charged, were falsely detailed in the Statement of Probable Cause. As a result, the Tort Claim's Notice states that Mrs. Mosby and her office "do not now have any legally justifiable reason to believe that the above-referenced individuals had committed the crimes for which they are charged." (See Attached Exhibit 3, Tort Claims Notice). The Tort Claims Notice goes on to aver that if, in fact, the knife at issue was illegal (as indicated by Officer Miller in his charging document of Mr. Gray), then not only is there an absolute defense to these criminal cases, but, there is a claim for false imprisonment, arrest and malicious prosecution of the six police officers, resting squarely on the door step of the State's Attorney's Office. As discussed below, because of the State's Attorney Office's investigatory role in this matter, they have forfeited immunity from civil suit.

Moreover, The Baltimore City State's Attorney's reckless, careless and inaccurate public statements are not protected by absolute immunity and have thus exposed her to civil liability and potential discipline by the Attorney Grievance Commission of Maryland, creating an impermissible personal bias and necessitating the appointment of an independent prosecutor. Despite clear guidance from the Court of Appeals discouraging public statements by a prosecutor which may diminish a defendant's right to an impartial jury and fair trial, Mrs. Mosby's inaccurate statements and inflammatory hyperbole at her press conference potentially subject her to sanction from the Attorney Grievance Commission and civil liability. *See, e.g., Attorney Grievance Commission of Maryland v. Gansler*, 377 Md. 646 (2003).

Choosing to ignore long established Supreme Court Case law regarding the diminished immunity of a prosecutor who acts as an investigator and gives extrajudicial statements, Mrs. Mosby has subjected herself to civil suit by the officers she seeks to prosecute. The threat of

pecuniary and professional sanction have stripped Mrs. Mosby of the impartiality necessary to fairly make prosecutorial decisions moving forward.

The United States Supreme Court in *Buckley v. Fitzsimmons* gives clear direction that a prosecutor enjoys “absolute immunity for the initiation and pursuit of a criminal prosecution, including presentation of the state’s case at trial.” *Buckley v. Fitzsimmons*, 509 U.S. 259, 270 (1993). This absolute immunity includes “the professional evaluation of the evidence assembled by the police and appropriate preparation for its presentation at trial...” *Id.*

However, Mrs. Mosby has gone to great lengths to stress her decision to levy charges was based on her offices “independent investigation,” and not reliant on the Baltimore Police Department’s investigation. Furthermore, Mrs. Mosby declared at her press conference that her office performed the role of an “independent investigation.” The Court in *Buckley*, relying on its decision in *Imbler v. Pachtman*, 424 U.S. 409, 432 (1976), reiterates that a prosecutor who acts as an investigator and not as an advocate does not enjoy absolute immunity

Furthermore the comments have violated Maryland’s Rules of Professional Conduct, Rules 3.6 and 3.8 (Special Responsibilities of a Prosecutor) which require attorneys to refrain from making extrajudicial statements that have “a substantial likelihood of materially prejudicing an adjudicative proceeding” and prohibits a prosecutor from filing a charge not supported by probable cause. Mrs. Mosby’s public assertions at her press conference fly in the face of the Court of Appeals stern warning to prosecutors that “a prosecutors, in particular should be even more cautious to avoid making potentially prejudicial extrajudicial statements.” *Gansler* at 698.

**V. THE BALTIMORE STATE’S ATTORNEY’S OFFICE SHOULD BE RECUSED BECAUSE OF THE COMPELLING INTERESTS OF THE ATTORNEY FOR THE FAMILY OF FREDDIE GRAY, A CLOSE FRIEND, FINANCIAL SUPPORTER AND ATTORNEY FOR MRS. MOSBY.**

It is the position of the undersigned counsel that Mrs. Mosby, and the Office of the State's Attorney for Baltimore City, be recused from further prosecution of the named Defendants in the above cited case numbers. There is an overwhelming conflict of interest that has arisen, and continues, in the State's Attorney's representation of the City of Baltimore. Mrs. Mosby has a significant personal and professional relationship with William H. "Billy" Murphy the founding partner of Murphy, Falcon & Murphy. This ongoing relationship has created a conflict for which the only remedy is the recusal of Ms. Mosby and the Baltimore State's Attorney's Office.

Mr. Murphy is the Gray family attorney and presents himself as their confidant and spokesperson. He has repeatedly appeared on television, both locally and nationally, on behalf of the Gray family. Mr. Murphy has a substantial financial interest in the outcome of any criminal case against these six police officers, as any guilty finding will improve his position in any potential civil suit against the City of Baltimore and its police department.

With reference to any potential civil claim by Gray family for whom Mr. Murphy is counsel, if the death of Mr. Gray was found to be accidental and in the course of a legal detention, at best a claim under Maryland State law claim for negligence or gross negligence would be supportable. As a result of the Local Government Tort Claims Act and Maryland tort law, there would be a limitation of local government liability, and Mr. Murphy would not be able to recover attorney's fees. That cap in local government liability would not be applicable if the Gray family had a viable federal Constitutional claim under § 1983, and attorney's fees could be awarded to Mr. Murphy. Notably, the charges against the Defendants that Mrs. Mosby most clearly overreached on are false imprisonment, assault, and second degree murder, each of which involve some level of intent. Intentional action under color of law which deprives an individual of a

Constitutional right allows for a Constitutional § 1983 claim. Therefore, Mrs. Mosby's pursuit of criminal charges involving intent, potentially has a direct financial impact on Mr. Murphy.

Mrs. Mosby's connection to Mr. Murphy is of great concern to the undersigned counsel, and it should be of even greater concern to the residents of this city. Mrs. Mosby had Mr. Murphy as a member of her team as she began the process of transitioning into her role as the State's Attorney for Baltimore City. Mr. Murphy also donated significantly to Mrs. Mosby's campaign, in essence helping her win her position. The connection between Ms. Mosby and Mr. Murphy is undeniable and the conflict it creates is detrimental in the pursuit of justice.

The Maryland Rules of Professional Conduct require attorneys in all positions to adhere to a strict code of ethical conduct. Mrs. Mosby's continued prosecution of the named Defendants woefully underrepresents justice, which is at the core of any prosecution. Maryland Rule 1.7 specifically states that there is a conflict if, "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a **personal interest of the lawyer**" (emphasis added).

In addition to her personal relationship, Ms. Mosby has a professional relationship with Mr. Murphy. A complaint was filed against Ms. Mosby to the Attorney Grievance Commission of Maryland late last year. In an e-mail dated October 29, 2014, Mr. Murphy outlines his representation of Ms. Mosby. (See Exhibit 7). It is clear from the exhibit, and from the response of the Attorney Grievance Commission of Maryland, that Mr. Murphy was retained by Ms. Mosby. Not only was Mr. Murphy's firm retained but he personally handled her matter. It is unclear as to whether this professional relationship is still ongoing with regards to any subsequent filings.

When interviewed recently by CNN's Don Lemon, Mrs. Mosby was asked about her contact with the Gray family. She indicated that she had brought them in to her office and "spoken

with them and their attorney.” Mrs. Mosby has clearly had direct contact with Mr. Murphy in regards to this case.

The Maryland Rules of Professional Conduct are very clear when it comes to conflicts of interest. It is plainly stated in Comment 8 under Maryland Rule 1.7 that, “[e]ven where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer’s ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer’s other responsibilities or interests.” The Court can glean guidance from Comment 26 of Rule 1.7, which states that, “[r]elevant factors in determining whether there is a significant potential for material limitation include the duration and intimacy of the lawyer’s relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict.”

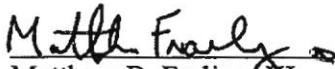
Yesterday, in a separate and unrelated matter to this one, State of Maryland v. Jeffrey Bolger, a nearly identical Motion to Recuse Mrs. Mosby from Prosecution was filed on the grounds that her relationship with William Murphy unfairly biased the outcome and status of that case. It was alleged in that Motion that two Defendants (both police officers) were charged with nearly identical criminal charges based on identical facts. It was alleged that the two defense attorneys (Mr. Murphy and Steve Levin) had been requesting the State’s Attorney’s Office, prior to Mrs. Mosby taking office, to dismiss all charges as they were not supported by any expert opinions (to the contrary, the medical examiner’s report actually supported dismissal of Mr. Levin’s client, not Mr. Murphy’s). According to the Motion, on Mrs. Mosby’s first official day after being sworn into office, she entered a *nolle prosequi* (dismissal) in favor Mr. Murphy’s client. (See Attached Exhibit, Motion, State v. Bolger). The Motion cites the unfair and undeniable intertwined

relationship by Mrs. Mosby and Mr. Murphy. The same reasoning applies with even greater force to the instant case.

### CONCLUSION

Each of the above-captioned Defendants have fundamental concerns about undeniable conflicts of interest which have turned the prosecution of this case into a platform for extra-prosecutorial motivations. These concerns are rooted in the United States Constitution, the Maryland Declaration of Rights, the Maryland Rules of Professional Conduct and the ABA's Guidelines for Prosecutors. As stated earlier, these concerns are deep, are real and are imminent. They require a dismissal of these cases, with the ability of an independent prosecutor to re-evaluate the charging decisions, or, in the least, a recusal of Mrs. Mosby's office.

Respectfully submitted,

  
Matthew B. Fraling, III

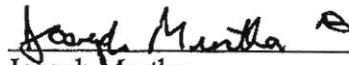
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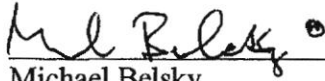
  
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