

STATE OF MARYLAND

Plaintiff

v.

CAESAR GOODSON

Defendant

* IN THE

* CIRCUIT COURT

* FOR

* BALTIMORE CITY

* Case No. 115141032

2015 DEC 29 P 3:57
CIRCUIT COURT FOR BALTIMORE CITY

* * * * *

**DEFENDANT'S MOTION TO STRIKE THE STATE'S
EXPERT STANFORD O'NEILL FRANKLIN
AND REQUEST FOR HEARING**

Defendant Caesar Goodson ("Defendant" or "Officer Goodson"), through his counsel, and pursuant to Maryland Rules 4-252(d) and 4-263(d), moves to strike the State's untimely designation of proffered expert Stanford O'Neill Franklin ("Mr. Franklin") and for reasons states:

1. On December 23, 2015, just two weeks before Officer Goodson's trial is scheduled to begin, the State designated Mr. Franklin as an expert in "policing practices and procedures." *See Exhibit 1.* Mr. Franklin is designated to testify regarding certain areas not previously disclosed to be discussed by any witness designated by the State including, "generally accepted policies, procedures, practices, training and custom throughout the United States" and "retaliatory prisoner transportation practices." *Id.*

2. The State's disclosure of expert witnesses was due on or before June 26, 2015. The State has offered no reason for its untimely disclosure.

3. When determining the type of sanction appropriate for a party's untimely disclosure, a court may consider the following: 1) the reasons why the disclosure was not

made; 2) the existence and amount of any prejudice to the opposing party; 3) the feasibility of curing any prejudice with a continuance; and 4) any other relevant circumstances. *See Raynor v. State*, 201 Md. App. 209, 227-28 (2011).

4. The December 23rd disclosure was the first notice provided to Officer Goodson by the State of its intention to call Mr. Franklin, as well as the areas in which he would be testifying. The untimely disclosure of Mr. Franklin introducing new areas of testimony prejudices Officer Goodson's right to prepare his defense. By way of example, Mr. Franklin is expected to opine on "retaliatory prisoner transportation practices," a phrase not defined anywhere in his disclosure. This purported practice has not been previously identified as an area of testimony by any of the State's witnesses. The charges against Officer Goodson have been pending since May 2015.¹ With this disclosure, the State has injected a new legal theory or area of testimony at the proverbial eleventh hour and this can only be characterized as unfair surprise.

5. In its disclosure, the State did not identify a reason for the untimely disclosure. It is highly unlikely that Mr. Franklin was just made known to the State, as Mr. Franklin has been anything but circumspect with his opinions and thoughts on the police's handling of the arrest of Mr. Gray and the events that followed. By way of example, attached as **Exhibit 2** to this motion is a list of some of Mr. Franklin's media appearances since April 2015. As the list demonstrates, Mr. Franklin has been offering his opinion to the public since shortly after the death of Mr. Gray.

¹ It has been represented to counsel for Officer Goodson that the State first contacted Mr. Franklin the week of December 20, 2015.

6. Mr. Franklin's public commentary continued through the course of Officer Porter's trial and thereafter. *Id.* Even after he was disclosed as an expert for the State, it appears that Mr. Franklin was unable to refrain from making comments to the media. As recently as December 27, 2015, Mr. Franklin was attributed as saying the following:

Retired police major Neil Franklin said, "in my mind and also in the prosecutor's mind, that is the most important case". "But it is a bit of a kick in the chest". Porter had been charged with involuntary manslaughter, second-degree assault, reckless endangerment and misconduct in office. "I feel it sends a bad message and gives the police hope that they will get away with brutality".

See **Exhibit 3** (<http://waltonian.com/2015/12/no-retrial-date-set-yet-in-first-freddie-gray-case/>).²

7. Mr. Franklin's comments run afoul of this Court's October 14, 2015 Order prohibiting any party (or its agents) from making any extrajudicial statements. The fact that majority of his comments occurred before he was supposedly retained is of no consequence. Mr. Franklin has been purposefully tainting the jury pool since Mr. Gray's untimely death and continues now that he is an agent of the State. This unquestionably prejudices Officer Goodson's right to a fair trial.

8. Even if the Court were to find that Officer Goodson has not been prejudiced by the late disclosure of Mr. Franklin and the introduction of a new area of testimony at this late date, this Court should preclude his testimony in the trial against Officer Goodson as a sanction for his failure to comply with the October 14, 2015 Order.

² It is also believed that Mr. Franklin called into a local radio broadcast on the morning of December 29, 2015 again expressing his views on the trials surrounding Mr. Gray's death. A copy of that broadcast will be requested.

9. A continuance will not cure the prejudice. Mr. Franklin's statements are already out in the public arena.

10. Given the notoriety of this case, it is unclear what reasonable explanation the State could possibly offer for its disclosure of an expert two weeks before trial.

WHEREFORE, Officer Goodson respectfully requests that the Court strike the untimely disclosure of proffered expert Mr. Franklin and preclude Mr. Franklin from testifying at his trial.



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Counsel for Officer Caesar Goodson

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of December 2015, a copy of the foregoing paper was mailed, first-class postage prepaid to:

Michael Schatzow, Chief Deputy State's Attorney
Office of the State's Attorney for Baltimore City
120 East Baltimore Street
Baltimore, Maryland 21202



Amy E. Askew

STATE OF MARYLAND

Plaintiff

v.

CAESAR GOODSON

Defendant

* IN THE

* CIRCUIT COURT

* FOR

* BALTIMORE CITY

* Case No. 115141032

* * * * *

ORDER

Upon consideration of Defendant Officer Caesar Goodson's Motion to Strike the State's Expert Stanford O'Neill Franklin, it is

this ____ day of _____, 2015,

ORDERED that the Defendant's Motion is **GRANTED**; and it is further

ORDERED that the State's Disclosure of Expert Stanford O'Neill Franklin is **STRICKEN**; and it is further

ORDERED that Stanford O'Neill Franklin is precluded from offering any testimony in the above referenced trial.

Judge
Circuit Court for Baltimore City

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CIRCUIT COURT FOR
BALTIMORE CITY

2015 DEC 23 A 11: 53
IN THE

STATE OF MARYLAND

v.

CAESAR GOODSON

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CASE No. 115141032

* * * * *

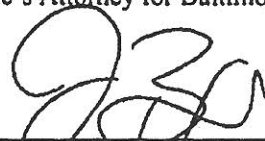
STATE'S SUPPLEMENTAL DISCLOSURE OF EXPERT WITNESS

Now comes the State of Maryland, by and through Marilyn J. Mosby, the State's Attorney for Baltimore City and John A. Butler, Assistant State's Attorney for Baltimore City pursuant to Rule 4-263(k) promptly files this notice that detailed discovery information, the general substance of which is identified below, was provided to the Defendant via U.S. Mail on December 23, 2015:

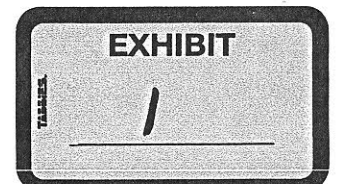
A disclosure pursuant to Rule 4-263(d)(8) that the State has consulted with and intends to call as an expert a certain witness concerning policing practices and procedures. Specific information has been provided to the Defendant via U.S. Mail.

Respectfully submitted,

Marilyn J. Mosby
State's Attorney for Baltimore City



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CERTIFICATE OF SERVICE

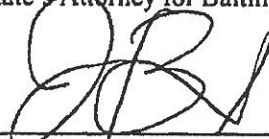
I hereby certify that on this 23rd day of December, 2015, a copy of the attached STATE'S SUPPLEMENTAL DISCLOSURE OF EXPERT WITNESS was mailed to Counsel for Defendant at the following address:

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Respectfully submitted,

Marilyn J. Mosby
State's Attorney for Baltimore City



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Stanford O'Neill Franklin has been the Executive Director of Law Enforcement Against Prohibition (L.E.A.P.) since 2010. Prior to taking that position, Mr. Franklin has served in various command and supervisory roles for law enforcement agencies within the State of Maryland. A copy of Mr. Franklin's curriculum vitae is attached as Exhibit 1.

Mr. Franklin's opinions will be based on his education, training, and experience, as well as on his review of discovery produced in this case, including written and recorded statements, other audio and video recordings, reports, photographs, maps, diagrams, Mr. Gray's presentation while in police custody during all police transport vehicle stops, including those at Druid Hill Avenue and Dolphin Street, and at North Avenue and Pennsylvania Avenue, and relevant Baltimore City Police Department General Orders and Policies, as well as generally accepted policies, procedures, practices, training, and custom throughout the United States. If called to testify, Mr. Franklin is expected to testify regarding police training, policies, general orders, practices, customs, safety, transportation, retaliatory prisoner transportation practices, and law enforcement generally. Mr. Franklin is expected to testify that the actions of Officer Goodson were unreasonable and inconsistent with the actions of a reasonable officer with similar training and experience. Mr. Franklin is expected to testify that Officer Goodson's actions in denying the request for medical attention and/or treatment by Mr. Gray were unreasonable and inconsistent with Officer Goodson's duties, training and experience, as well as with the general orders, directives, procedures and policies in place at the time of Mr. Gray's arrest. In particular, Mr. Franklin is expected to testify regarding an officer's training in evaluating an arrestee's need for medical care, whether requested or not. Mr. Franklin is further expected to testify as to the relationship between an arrestee's request or need for medical care, and police booking procedures.

Mr. Franklin is further expected to testify that Mr. Goodson acted unreasonably and inconsistent with his training, as well as with the general orders, directives, procedures and policies in place at the time, relative to the transportation of Mr. Gray. Mr. Franklin is expected to testify that Officer Goodson's actions relative to the use of a seat belt were unreasonable, under the totality of the facts and circumstances of this case. Mr. Franklin is expected to testify that directives from the Baltimore City Police Commissioner are to be followed, and are not discretionary, particularly those that concern the safety of those in custody.

Moreover, Mr. Franklin is expected to opine that if a directive provides for an officer to utilize discretion, that discretion will be specified, and that an officer must conduct himself in accordance with all directives promulgated by the Police Department under which one is employed.

NEILL FRANKLIN IN THE MEDIA

More Questions than Answers in Baltimore – Interview with Neill Franklin, CNN (Apr. 22, 2015), <http://transcripts.cnn.com/TRANSCRIPTS/1504/22/cnnt.01.html>

Former Baltimore Police Officer: If Failed Mayor Martin O'Malley Comes Back to Town, "You May See a Riot", REALCLEAR POLITICS (Apr. 29, 2015), http://www.realclearpolitics.com/video/2015/04/29/former_baltimore_officer_if_failed_mayor_martin_omalley_comes_back_to_baltimore_you_may_see_a_riot.html

New Timeline for Freddie Gray Van Transport: Neill Franklin, Executive Director of Law Enforcement Against Prohibition, Discusses the New Freddie Gray Timeline Revealed by Baltimore Police, MSNBC (Apr. 30, 2015), <http://www.msnbc.com/thomas-roberts/watch/new-timeline-for-freddie-gray-van-transport-437111875816>

Dick Uliano, *Man Who Filmed Freddie Gray Arrest Says He'll Keep the Camera Rolling*, WTOP (May 4, 2015), <http://wtop.com/baltimore/2015/05/man-who-filmed-freddie-gray-arrest-says-hell-keep-the-camera-rolling/>

Freddie Allen, *After Charges Filed and Curfew Lifted, Baltimore Regroups*, THE BALT. TIMES (May 5, 2015), <http://baltimoretimes-online.com/news/2015/may/05/after-charges-filed-and-curfew-lifted-baltimore-re/>

Former Cop: The BPD Needs to be "Purged", The Real News Network (May 8, 2015), http://therealnews.com/t2/index.php?option=com_content&task=view&id=31&Itemid=74&jumival=13823

Todd Krainin & Joshua Swain, *How Martin O'Malley Helped Create the Baltimore Riots: LEAP's Neill Franklin*, REASON.COM (May 8, 2015), <https://reason.com/reasontv/2015/05/08/neill-franklin-drug-war-to-blame-for-bal>

Former Baltimore Police Trainer: Porter Responsible for Freddie Gray's Death, The Real News Network (Dec. 10, 2015), http://therealnews.com/t2/index.php?option=com_content&task=view&id=31&Itemid=74&jumival=15279

Mike Hellgren, *Jury Begins Deliberating in Porter Trial in Freddie Gray Case*, CBS BALTIMORE (Dec. 14, 2015), <http://baltimore.cbslocal.com/2015/12/14/jury-to-hear-closing-arguments-in-officer-trial-in-gray-case/>

The Marc Steiner Show: Police Practices in Baltimore and Beyond, WEAA (Dec. 16, 2015), <http://www.steinershow.org/podcasts/racism/police-practices-in-baltimore-and-beyond/>

Robert Lang, *Porter Trial Observers Ponder Future of Cases and Police Reform – Interview with Neill Franklin*, WBAL (Dec. 20, 2015), <http://www.wbal.com/article/131398/2/porter-trial-observers-ponder-future-of-cases-police-reform>



Maryland News this Week: The Mistrial in the Officer William Porter Case, WBAL (Dec. 20, 2015), <http://www.wbal.com/podcasts/channel/marylands-news-this-week> (interview with Neill Franklin begins at 15:52)

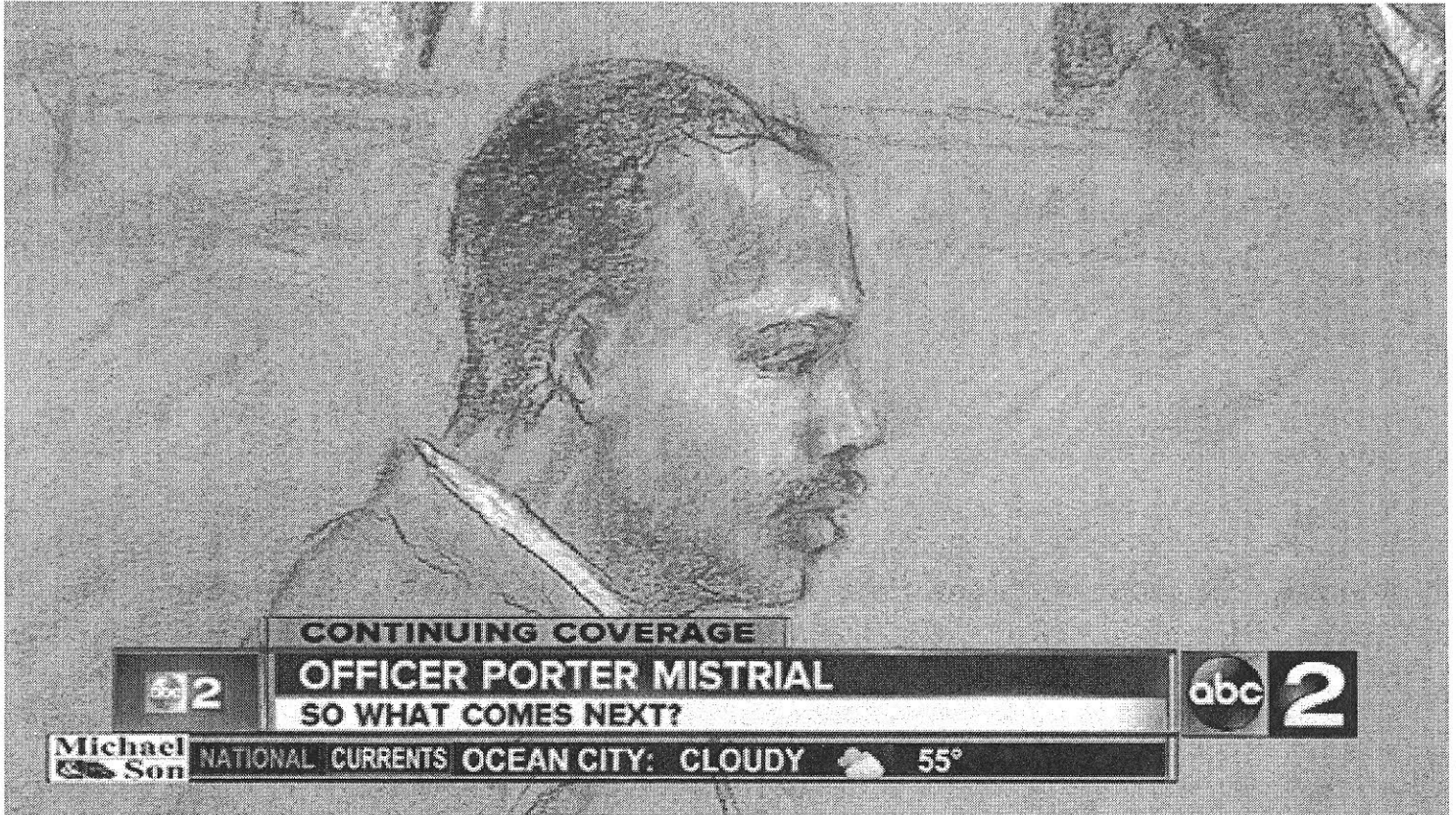
Larry Roberts, *After Hung Jury in Officer Porter Trial, What Now?*, NANONNEWS (Dec. 25, 2015), <http://nanonews.org/after-hung-jury-in-officer-porter-trial-what-now/>

Lynette Rhodes, *No Retrial Date Set yet in First Freddie Gray Case*, THE WALTONIAN (Dec. 27, 2015), <http://waltonian.com/2015/12/no-retrial-date-set-yet-in-first-freddie-gray-case/>

TRENDING

[Jackson Admits He 'Really Wanted' San Bernardino Terrorists to Be White \(/2015/12/jackson-admits-he-really-wanted-san-bernardino-terrorists/\)](#)

No retrial date set yet in first Freddie Gray case



/ USA (/USA/)

• Author: Lynette Rhodes Dec 27, 2015,

Dec 27, 2015, 17:32

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Officials appealed for calm as small crowds protested along streets lined with police officers. Trying to walk that fine line of being ready to act if something goes wrong but not over-reacting in a peaceful protest situation... But instead of a dramatic conclusion, there was confusion.

The jurors made several requests since they began deliberating Monday.

All of the attorneys - prosecutors ([http://live.baltimoresun.com/Event/Officer William Porter trial Freddie Gray case live coverage](http://live.baltimoresun.com/Event/Officer_William_Porter_trial_Freddie_Gray_case_live_coverage)) Janice Bledsoe and Michael Schatzow, along with Gary Proctor and Joe Murtha for the defense - are still under a gag order, so they did not comment. Courthouse deputies blocked reporters from approaching them.

Retired police major Neil Franklin said, "in my mind and also in the prosecutor's mind, that is the most important case". "But it is a bit of a kick in the chest". Porter had been charged with involuntary manslaughter, second-degree assault, reckless endangerment and misconduct in office. "I feel it sends a bad message and gives the police hope that they will get away with brutality".

The message was the same on Wednesday, after roughly 16 hours of deliberation. But it's no surprise the jury wasn't able to reach a verdict, he said.

"It was hard to make a villain out of Officer Porter", he said.

But the mistrial

(http://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/mistrials.html) was a disappointment for some residents in need of a definitive resolution.

Tessa Hill-Aston, president of the Baltimore chapter of the NAACP, said she expected the group of protesters outside the courthouse and elsewhere in the city would grow.

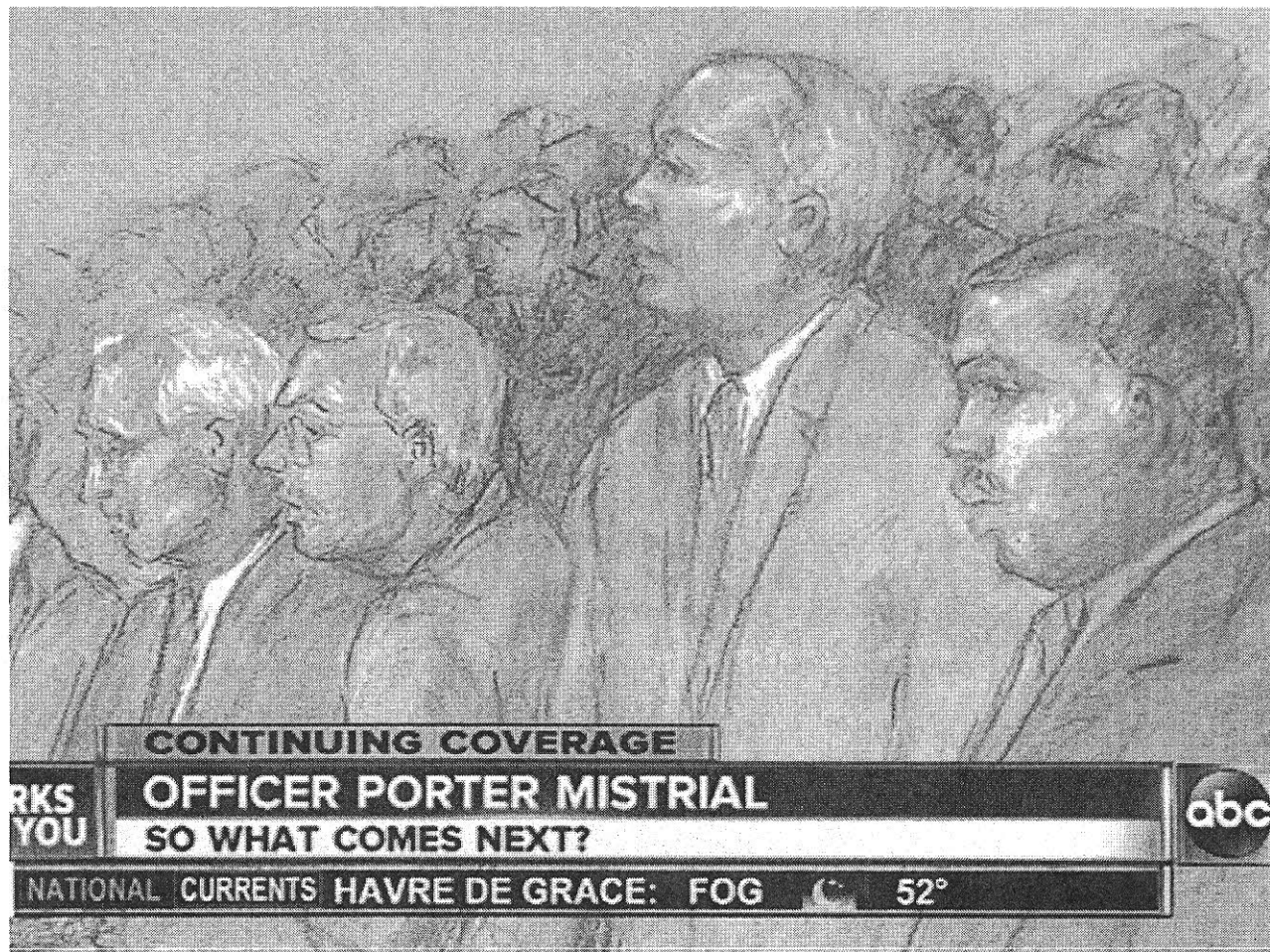
At least one activist was arrested in the immediate aftermath of the **mistrial**.

There are many reasons why a **mistrial** can occur during court proceedings.

Gray's April death of injuries sustained while in police custody came at a time of high racial tensions in the United States following police killings of other black men in cities including NY and Ferguson, Missouri, and sparked rioting and arson in the majority black city of 620,000 people. The autopsy (<http://www.bbc.com/news/world-us-canada-35117901>) concluded that he probably couldn't brace himself whenever the van turned a corner or braked suddenly. Porter told the van's driver and a supervisor that **Gray** had asked for aid but none was summoned, according to (<http://bigstory.ap.org/article/8e690fba9b2407d8b2fa5c6603b8c43/jurors-deliberate-over-william-porters-fate>) testimony. After **Gray** was stopped by police, video recorded by witnesses shows him being dragged into a van, crying out in pain.

If prosecutors seek to retry Porter ahead of the next scheduled trial, it could have a domino effect - pushing back all the other trials.

"There's a lot for the defense and the prosecution to be thinking about at this point", says University of Maryland Law professor Doug Colbert.



Ott said he was surprised the jury failed to acquit Porter.

"It's these officers who are on trial, but the reputation of the police department was irreparably damaged when Freddie Gray (<http://www.baltimoresun.com/news/maryland/freddie-gray/>) died". She says people understand the right to protest, but they also respect "the sanctity of our communities and the value of our communities". In some cases, a **mistrial** means the saga is over.

Van driver Officer Caesar Goodson is the next officer due in court, with his trial set for January 6.

Porter, 26, was charged with involuntary manslaughter, second-degree assault, reckless endangerment and misconduct in office.

It wasn't clear how the **mistrial** would affect the other officers. Prosecutors and defense attorneys for the officer, William Porter (<http://dailycaller.com/2015/04/28/inside-the-riots-violence-fire-and-robbery-as-crooks-attack-reporters/>), were set to meet in private with **Baltimore** City Circuit Judge Barry Williams to discuss the new trial date, Reuters (<http://www.reuters.com/article/us-baltimore-police-idUSKBN0TZ1F620151217>) reported (http://www.wbalv.com/news/no-new-trial-date-set-yet-in-officer-porter-case/37010756?utm_source=Social&utm_medium=TWITTER&utm_campaign=SnyderWBALTV&Content%20Type=Story).

"It was never going to be easy".

"You lose your ability to call yourself a protester when you choose to harm people and damage property", Commissioner Davis said.

Gray's stepfather, Richard Shipley, said the family is looking forward to another evaluation of the case by 12 fresh jurors. "They did the best that they could...."

A **mistrial** is much different from a not-guilty verdict.

"All of us, if we believe in justice, must have respect for the outcome of the judicial process", Rawlings-Blake said.

"There are officers that I work with that are wonderful", she said, but "if something were to happen to that young lady, where am I in this?"

"I think the state's attorney put on a weak case". It is unclear as of this week if the state will pursue a retrial. If they push their trails back to go after Porter again and they fail, he has absolutely no incentive to help them.

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December 29, 2015

Clerk's Office, ATTN: Lindsay Manning
Circuit Court for Baltimore City
Courthouse West
111 N. Calvert Street, Room 200
Baltimore, Maryland 21202


Re: *State of Maryland v. Goodson*
Case No. 115141032

Dear Ms. Manning:

Enclosed for filing Under Seal in the above referenced matter is the Defendant's Motion to Strike the State's Expert Stanford O'Neill Franklin and Request for Hearing.

Please date-stamp and return the enclosed extra copy of the Motion to Seal to the Courier for our files. Thank you.

Very truly yours,



Amy E. Askew

AEA/bae

Enclosures:

cc: Matthew B. Fraling, III, Esquire
Michael Schatzow, Esquire (via electronic and first class mail)
Honorable Barry G. Williams (via hand delivery)