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## Why Baltimore settled this case is the \$200,000 question

BY BRENDAN KEARNEY

A police officer's actions have cost the Baltimore Police Department, and by extension the taxpayers of Baltimore, \$200,000.

That much, the city has agreed to make public.

Other details — who the officer was; when and where the incident occurred; who the victim was; who arrested him, and why his claim was worth six figures — remain secret.

In the nearly four months since the settlement was approved, the city solicitor has told The Daily Record that the taxpayers' right to know must take a backseat to the privacy interest of the victim, who demanded confidentiality. He also said the arrest stemmed from a "rookie" mistake by a police officer with an otherwise impeccable record.

"It seems to me that that's just not enough," said former U.S. Attorney for Maryland and state Attorney General Stephen H. Sachs, who recently led an independent review of the Maryland State Police's spying on activists.

Asked to comment on the facts the city had shared with The Daily Record, Sachs said he "must be missing something."

"Number 1, the fact is [the claimant's] wholly exonerated, and nothing can change that," Sachs said. "I don't see how there's any shame in the world knowing that he didn't do anything wrong and that the police made a terrible mistake. But what transcends that ... is the taxpayers of Baltimore spent \$200,000 because of a police mistake. The public's entitled to know why."

## **'Undeniably innocent'**

It began with a cryptic item on the March 10 Baltimore Board of Estimates' agenda.

In the case of "Unnamed Individual vs. Baltimore Police Department," the city's spending panel was asked to approve a confidential settlement to resolve a claim for "significant damage...to professional career and reputation with a loss of clientele."

The Baltimore Sun published an article on March 13 giving the amount of the settlement and City Solicitor George Nilson's reasons for keeping all other details secret.

The Daily Record decided not to publish an article at that point but filed a request for all further details under the Maryland Public Information Act.

The city has since denied The Daily Record's request. However, Nilson did agree to be interviewed for this article.

At a time and place he could not disclose, Nilson said, a man was served with a warrant for a "pretty serious" crime but "not what most people would describe as an act of violence."

"It was an act that, if that individual had anything at all to do with it, would be extremely harmful...[to] the individual's career, profession, and livelihood," Nilson said in late June.

The man might have been arrested and briefly incarcerated — Nilson wasn't sure — before the authorities realized their mistake: They had the wrong guy. Same unusual name, wrong man, Nilson said.

The police officer who found an address for the target's name "didn't do a double or triple check against other possible sources," Nilson said.

"It was a new task, totally new to this officer," he said. "Rookies make mistakes, and he made a mistake. He's not a bad officer."

Nilson said the officer's record was otherwise "clean" and "totally impeccable."

In any event, the warrant was served, though Nilson would not say if it was by that officer, another city officer or some other law enforcement agency.

"It was a total case of mistaken identity," he said, calling the unfortunate arrestee "undeniably innocent."

It turned out that the man the police arrested, an immigrant, had not yet arrived in this country when the crime at issue occurred, and he was able to prove it, Nilson said.

But the damage had already been done to his reputation.

Despite "not even close to being a public figure," the man's encounter with the police became "instantly public and went viral in the person's community," Nilson said.

The man hired a lawyer, sued, and ended up negotiating the \$200,000 settlement. Nilson said this is the first time he's kept a police settlement secret in his three and a half years as city solicitor. "All these things make this a unique case in my experience," he said.

### **Generally immune**

Sachs, Nilson's supervisor as state attorney general in the early 1980s, was among the lawyers contacted by The Daily Record who believe Nilson's explanations don't provide a sufficient reason for secrecy in this case.

"I don't understand. I truly don't understand," Sachs said in late June. "I'm not questioning George Nilson's good faith, I'm not questioning anybody's good faith, but I just don't think it's sound judgment. I just don't understand the need, the desirability, the justification for confidentiality."

Another former state attorney general, J. Joseph Curran Jr., was hesitant to weigh in. "I don't know why [Nilson's] taken that position but I can tell you my experience with him he's a very astute and competent attorney," said Curran, who now works at the Injured Workers Insurance Fund. "But that doesn't mean he's always right or always wrong."

James Rhodes, a private Baltimore lawyer who won a mistaken-identity case in the state's highest court just a few weeks before the city approved the mysterious \$200,000 settlement, believes there must be more to the story.

Police officers are generally immune from suit for ordinary negligence, he noted. "There is simply no way the board would have signed off on a \$200,000 judgment, much less a \$5,000 for [ordinary] police officer negligence," Rhodes said. "They just would not."

The Baltimore Police Department's maximum liability for a single claimant under the Local Government Tort Claims Act is \$200,000. By comparison, the city paid that amount in December to settle a claim by a Navy veteran who was strip-searched and anally probed, in public, in an act of harassment by the since-disbanded Special Enforcement Team in April 2006.

Last November, the city paid \$225,000 to 17 plaintiffs to settle similar allegations against some of the same Special Enforcement Team defendants. The city did not try to keep either of those settlements from becoming public.

Rhodes thinks the city is looking after its own interests, rather than the claimant's, in withholding the details in this instance.

## **Unanimous vote**

The approval of the recent \$200,000 settlement came in March, the second month of Stephanie Rawlings-Blake's term as mayor.

Both as City Council president and as mayor, Rawlings-Blake has made transparency, especially with respect to the city police department, a public priority. As council president she introduced a resolution to disclose the final investigation results of police-involved shootings. The names of such officers were kept secret for a time during the administration of Sheila A. Dixon, when Nilson also was city solicitor.

Rawlings-Blake also pushed for the police department to send crime alerts via text-messages, hired a new inspector general and backed greater transparency in the dealings of the Baltimore Development Corp.

In an interview with The Daily Record earlier this year, Rawlings-Blake underscored the need to eliminate the "gray area in transparency" in city dealings.

"We need to make sure that we're doing everything we can to be open and fair about the information that is available to the public," she said.

But in March, Rawlings-Blake voted to approve the anonymous settlement as presented by Nilson, who also sits on the Board of Estimates.

This represents no deviation from the mayor's previously stated policy, her spokesman said in late June.

"Transparency is something she's committed to when there's a clear benefit," said Ryan O'Doherty, the spokesman. "In this case, additional transparency was in the view of the plaintiff ... damaging. ... I think it's reasonable to accept that."

Nilson "represents the city in all legal matters, and he recommended the terms of the settlement," including the decision to honor the plaintiff's demand for confidentiality, O'Doherty said.

Pressed further, O'Doherty invited The Daily Record to sue the city.

"Take action if there's a concern," O'Doherty said. "Don't just whine about it in an opinionated editorial."

He added that "every single member" of the five-member board approved the settlement, not just the mayor and Nilson.

Spokesmen for two other board members, City Council President Bernard C. “Jack” Young and Director of Public Works David E. Scott, said they had been satisfactorily briefed and decided the plaintiff’s request for anonymity was reasonable.

City Comptroller Joan Pratt, secretary of the board, said she “knew everything” about the incident that led to the settlement before casting her vote.

“It’s true what he’s saying,” Pratt said of Nilson’s account of the mistaken arrest.

Asked about the high-dollar amount for a mistaken-identity arrest, Pratt alluded to the city’s recent budget battles. “We wouldn’t be giving money away if we didn’t have to,” she said.

### **Presumption of openness**

Mistaken identity arrests happen and lawsuits against the city sometimes follow, but confidential settlements of them are rare.

In 1997, long before Nilson assumed the top spot in the city law department, the city tried to keep the amount of a settlement confidential — only as to the amount, not the parties or the incident. The Baltimore Sun sued for the information, eventually winning at the Court of Appeals.

In that case, the family of a man shot dead at Lexington Market in 1997 sued the city but reached a settlement just before trial. The presiding judge closed the courtroom and sealed the file.

Judge M. Brooke Murdock denied The Sun’s request to intervene in the case, and the newspaper’s Public Information Act request was also rejected. In July 2000, the Court of Appeals decided the “presumption of openness” trumped the governmental interest in encouraging settlement and the privacy interests of James Quarles III’s family.

David Wachen, a media lawyer Shulman, Rogers, Gandal, Pordy & Decker P.A. in Potomac, said the Quarles case “seems right on point.” He pointed to a footnote in that opinion that states, “Courts generally take the position that the requirements of a public information statute cannot ordinarily be circumvented by agreements between the government officials and others.”

However, the March settlement may include a twist not present in the Quarles case.

In its denial of The Daily Record’s Public Information Act request, the city claimed the arrest details “are protected from disclosure under section 10-108 of the Criminal Procedure Article of the Maryland Code.”

That section deals with expunged records. While the city has not responded to The Daily Record’s follow-up request for documentation on the time and reasons for the expungement, Nilson said in an interview last week that he believes the records were expunged.

If there has been an expungement, Robert McDonald, chief counsel for opinions at the Attorney General's Office, said it could put the city in a bind. "It is an interesting issue that public money's been spent and why and isn't there some way that the public can oversee that, but on the other hand, if there's been an expungement, they're not supposed to be giving out the name of the person either," McDonald said. "Our settlements are not confidential here, but I don't know if I've ever heard of an expungement situation."

And Alice Neff Lucan, a media lawyer who serves as a hotline attorney for the Maryland-Delaware-D.C. Press Association, said "the victim does have a legitimate invasion of privacy" interest.

To Steve Sachs, though, the decision to keep the entire case confidential still seems untenable.

"There's official conduct or misconduct and the use of public funds," he said. "Those two things are precisely what the public is entitled to know about. And that's the reason for the Public Information Act. That's why we have one." ■

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