GEORGE FLOYD / BREONNA TAYLOR ESSAYS

by

Julius Wachtel

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IS THE "CURE" WORSE THAN THE "DISEASE"?

Dem's push the "George Floyd Justice in Policing Act."
Its consequences could be profound.

For Police Issues by Julius (Jay) Wachtel. On June 8, 2020, a mere twelve days after those punishing "nine minutes and twenty-nine seconds" took George Floyd's life, the 116th. Congress introduced the "George Floyd Justice in Policing Act of 2020." Seventeen days later, on June 25, the House approved the measure by a comfortable 236-181 margin. Only three Republicans, though, voted in its favor. And the Senate, then a province of the "Reds," simply refused to take it up.

Hoping for a better outcome, the Dem's reintroduced the legislation in the 117th. Congress. On March 3rd., reflecting their eroded standing, the "George Floyd Justice in Policing Act of 2021" passed the lower chamber on a far less decisive 220-212 vote. It now awaits action by the evenly-divided Senate. Here are some of its key provisions (for the text version click here; for a summary click here.)

- As Federal law (18 USC 242) presently stands, police officers can only be prosecuted for "willful" civil rights violations, meaning done on purpose and with bad intent. The George Floyd Act would relax this standard to include behavior that was "knowing" – meaning, not by accident – or "reckless." Should death result, present penalty enhancements would be extended to include situations where officer conduct was a "substantial" contributing factor to the fatality, not only its sole or primary cause.

- In *Harlow v. Fitzgerald* (457 U.S. 800, 1982) the Supreme Court ruled that "qualified immunity" protects government employees from lawsuits for deprivation of civil rights under 42 USC 1983 "insofar as their conduct does not violate 'clearly established' statutory or constitutional rights of which a reasonable person would have known." Under the Floyd Act, that "immunity" would become a historical footnote. Civil rights lawsuits against individual officers would be heard (and could ultimately succeed) no matter whether an officer "was acting in good faith" or believed that their conduct was "lawful."

- An extensive, highly detailed section of the Act regulates how Federal law enforcement officers (but read on) go about their business. No-knock warrants are prohibited. Officers must intervene when colleagues misbehave. Most importantly, the use of force, including deadly force, would be bound by standards that are far less forgiving than the present go-to, the Supreme Court ruling in Graham v. Connor. Here's a extract from that landmark decision:

  > The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.

  No more. If at all possible, de-escalation must be attempted. Force also appears restricted to making arrests, and then only when "the officer has probable cause to believe" (*correctly* so) that the person being taken into custody committed a crime. Moreover, the force used must be "necessary and proportional," and lethal force is only allowed "as a last resort" once "reasonable alternatives…have been exhausted" and there is "no substantial risk of injury to a third person." Chokeholds and carotid holds are banned outright.

- To keep getting Federal law enforcement funds, state and local governments would have to follow the same use-of-force standards as the Feds. They must also contribute to a "National Police Misconduct Registry" that will include information about every citizen complaint filed against a state or local law enforcement officer. Instances that allegedly involve racial profiling or excessive force would be indexed by officer name and appear on a public website. To keep those Federal bucks rolling in, agencies would also have to participate in a national effort to combat racial profiling and assure a "more respectful interaction with the public." They would be required to consistently detect "episodes of discriminatory policing" and sanction officers who engage in such

practices.

- The Act goes beyond George Floyd. To quell concerns that surplus military gear "could be used inappropriately during policing efforts in which people and taxpayers could be harmed," the measure prohibits its transfer to local law enforcement agencies except for counterterrorism purposes (no more using it for drugs or border security.) The Act bars the transfer of firearms, impact weapons, drones, and vehicles other than automobiles and utility trucks. There's a provision for exceptions, but its complexities seem befuddling.

After reintroducing the measure in the new Congress, its main House sponsor, Rep. Karen Bass (D-Calif., pictured above) evocatively summarized its purpose:

> Never again should an unarmed individual be murdered or brutalized by someone who is supposed to serve and protect them. Never again should a family have to watch the murder of their loved one over and over again on the TV. Never again should the world be subject to witnessing what we saw happen to George Floyd in the streets in Minnesota.

Representative Bass' partner in the effort, House Judiciary Committee Chairman Jerrold Nadler, also expressed intense views. But he did offer an olive branch to the authorities:

> We have not forgotten the terrifying words 'I can't breathe' spoken by George Floyd, Eric Garner, and the millions of Americans in the streets who have called out for change in the wake of the murders of George Floyd, Breonna Taylor and so many others…With this legislation, the federal government demonstrates its commitment to fully reexamining law enforcement practices and building better relationships between law enforcement and the communities they are sworn to protect and serve.

Were it that simple. A continued profusion of lethal encounters (i.e., Breonna Taylor, Ma'Khia Bryant, Adam Toledo, Daunte Wright) has led some "Blues" to criticize the Floyd Act as much too little, far too late. Sponsored by Representative Ayanna Presley (D-Mass.) and Rashida Tlaib (D-Mich.), the "BREATHE" Act would, among other things, "divest federal resources from incarceration and policing" and "invest in new, non-punitive, non-carceral approaches to community safety that lead states to shrink their criminal-legal systems…."

As one might expect, such views have horrified the "Reds." But there are exceptions. Say, Senator Tim Scott (R-S.C.) One of the few Republicans to openly endorse some

aspects of the Floyd Act, he seeks "a substantive piece of legislation that is transformative for policing." But his views on what the final product should look like aren't what the measure's sponsors have in mind. For one thing, he'd like a re-do of the qualified immunity provision so that the burdens of litigation and unfavorable outcomes fall on agencies instead of individual cops. He also strongly opposes the notion of making it easier to prosecute officers for Federal civil rights violations:

> If you demonize and/or eliminate protections that they (police) have, chances are very low that you're going to have officers responding, so community safety goes down. Case in point: Portland, Cleveland, New York, Atlanta, Chicago. So we have to do something that strikes the right balance.

Were it that simple. While some tweaks might help get a few of Representative Scott's colleagues to vote "yea," influential civil rights groups that back the Floyd Act have steadfastly refused to water it down. Sherrilyn Ifill, President of the NAACP Legal Defense and Educational Fund, demands that the law pass exactly as written:

> The George Floyd Justice in Policing Act is a vital public safety measure. The core of the bill are measures that clear away barriers to holding law enforcement officers accountable for brutality and misconduct…We call on the Senate to do its part and immediately take up and pass the George Floyd Justice in Policing Act.

That's definitely a non-starter for the more stalwart Reds, say, the Heritage Foundation's Zack Smith. In his view, prohibiting the transfer of military gear and eliminating no-knock warrants would make policing far more dangerous, while tightening the rules on the use of deadly force "could cause officers to hesitate in critical situations."

Naturally, police union leaders are deeply invested in what the Act might bring. Patrick Yoes, the FOP's National President, feels that some of its measures "could have a positive impact." Yet he (and, assumedly, most of his membership) strongly opposes other aspects, such as abolishing qualified immunity. Mr. Yoes has also complained that despite the need for "genuine dialogue and engagement" the Act was sent "directly to the floor – without Committee consideration or any real debate on meaningful amendments."

That lack of consultation has troubled other influential law enforcement leaders. Cynthia Renaud, the retired police chief who leads the International Association of Chiefs of Police, issued a detailed, highly critical "letter" that strongly objects to the Act's key provisions. She warns, first, that ending qualified immunity "would have a profoundly chilling effect on police officers and would limit their ability and willingness

to respond to both critical incidents and routine calls for service without hesitation." Ms. Renaud also cautions that the Act's use-of-force rules, which go well beyond *Graham*, assume "a level of officer influence over circumstances that does not exist and strives to create a level of perfection that cannot possibly be obtained." In effect, cops would be encouraged to do nothing. Her objections extend to the National Police Misconduct Registry and to the prohibition on the transfer of military equipment, which she deems crucial for officer safety. Really, considering the penetrating power of firearms in the hands of the general public, the availability of armored vehicles does seem a no-brainer.

So what do *we* think? (Glad you asked!) We've taken a deep look at the proposal and are greatly concerned about its reach. In its enthusiasm to reflect today's sociopolitical climate, the Act seems to overlook the actual workplace of policing. As this retired law enforcement professional well remembers, it's an inherently messy space. When Louisville cops executed their infamous search warrant at the residence of Breonna Taylor, they didn't anticipate that a companion would be there, nor that he would be armed, nor that he would interpret their presence as a criminal assault and open fire. And when an officer fired back after a bullet struck his partner, his round missed its mark and tragically killed Ms. Taylor, who was standing alongside.

That episode likely spurred the Act's prohibition of lethal force unless there is "no substantial risk of injury to a third person." Yet officers often arrive at chaotic scenes knowing preciously little about the circumstances and nothing about its participants. Consider the recent tragic example of Ma'Khia Bryant. Within seconds of a cop's arrival at the disorderly scene, one angry teen tried to plunge a knife into the torso of another. In this example, the officer's shots struck their intended target. Had he not fired, as others were nearby, Ms. Bryant would have survived. But her intended victim could have been fatally stabbed.

It's for the reason that officers must occasionally make "split-second" decisions that the Supreme Court ruled as it did in *Graham*. As we mentioned in "Routinely Chaotic", lethal encounters typically occur in confused situations that teem with conflict and uncertainty. Throw in a lack of information, a shortage of human and material resources, and the inevitable "idiosyncrasies" of both cops and noncompliant citizens, and you have "A Recipe for Disaster."

What gets little play are the many successes (including more than a few miracles) that good cops pull off as a matter of course. As we recommended in our recent *Police Chief* piece, studying these could prove instructive. Yet the jargon-rich Act doesn't propose to craft organic solutions, and certainly not with any input from working cops. Instead, the Act's approach seems wholly regulatory, as though the infinitely complex

legislation can accomplish anything beyond guaranteeing long-term employment to legions of Federal and State overseers.

But reality *has* intervened. Major cities are experiencing a surge in violence and armed mayhem (click here for Chicago, here for Los Angeles, and here for New York City.) So it seems unlikely that the Act will pass in its current form. Hopefully, though, its sponsors will get the message and craft an approach that's attuned to the messy social environment that officers face each day. Cops *and* citizens deserve no less.

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PUNISHMENT ISN'T A COP'S JOB

An officer metes out his brand of discipline.
He then faces society's version.

For Police Issues by Julius (Jay) Wachtel. It's impossible to not be repulsed by the horrific scene. A bystander video depicts Derek Chauvin, a veteran Minneapolis cop, relentlessly pressing his knee against George Floyd's neck. Even as Mr. Floyd protests he can't breathe and bystanders implore the now ex-cop to stop, Chauvin doesn't relent.

Public fury propelled an unusually swift official reaction. It took only one day for Minneapolis Mayor Jacob Frey to fire Chauvin and the three colleagues who participated in Mr. Floyd's arrest. Only two days after that state prosecutors charged Chauvin with third-degree murder ("perpetrating evidently dangerous act and evincing depraved mind") and second-degree manslaughter ("culpable negligence creating unreasonable risk"). As of yet, charges have not been filed against his colleagues.

"Depraved" is an obviously challenging standard. How "depraved" were Chauvin's actions? Here's how Mayor Frey described the episode:

> For five minutes we watched as a white officer pressed his knee into the neck of a black man who was helpless. For five whole minutes. *This was not a matter of a split-second poor decision*. (Emphasis ours.)

While the mayor intimated that Chauvin acted maliciously, he didn't say what it was a "matter" of. What *were* Chauvin's motives? First, let's examine what's known.

According to the complaint, it all began with a 9-1-1 call from a nearby convenience store. Here's an excerpt:

> 9-1-1: How can I help you?
>
> Caller: Um someone comes our store and give us fake bills [a counterfeit $20] and we realize it before he left the store, and we ran back outside, they was sitting on their car. We tell them to give us their phone, put their (inaudible) thing back and everything and he was also drunk and everything and return to give us our cigarettes back and so he can, so he can go home but he doesn't want to do that,

and he's sitting on his car cause he is awfully drunk and he's not in control of himself.

MPD (ex-)officers Thomas Lane and J.A. Kueng went to the store. They were directed to a vehicle parked across the street. Inside were Mr. Floyd and two companions, a man and a woman. A nearby security camera captured much of what took place.

George Floyd, who occupied the driver's seat, was the officers' first objective. Once handcuffs were applied – according to the complaint, Mr. Floyd resisted – Lane took charge of him while his partner concerned himself with the others. Mr. Floyd was 6-6, over 200 lbs. and uncooperative. With some difficulty the cop walked him to the sidewalk and had him sit down. They argued throughout, with the officer reprimanding and Mr. Lloyd protesting. While the cop grew exasperated and eventually launched into a lecture, the interaction didn't seem (from this ex-l.e.o.'s point of view) especially heated. Neither did it portend violence, particularly as Mr. Floyd was well restrained. (Had he not been securely handcuffed, there's no question that he would have bolted.)

Soon, the officer brought Mr. Lloyd to his feet and, together with his partner, marched the reluctant man across the street. At that point the episode seemed like just another low-level, no-big-deal arrest, one of the innumerable such events that take place every day, on every shift, and nearly always end without serious consequence. Once the trio observably reaches the other side it really does seem like "game over." Mr. Lloyd's pockets had already been searched, and all that was left was to put him in the back of a patrol car and head for the station.

That's where this video ends. And where the real problems begin. According to the murder complaint, and as partly depicted on some shaky video footage included in a montage assembled by the *New York*

Times, on reaching the patrol car "Mr. Floyd stiffened up, fell to the ground, and told the officers he was claustrophobic." Chauvin and the fourth officer, Tou Thoa, arrived and tried to help get Mr. Floyd into the car. But he continued resisting:

> "The officers made several attempts to get Mr. Floyd in the backseat of squad 320 from the driver's side. Mr. Floyd did not voluntarily get in the car and struggled with the officers by intentionally falling down, saying he was not going in the car, and refusing to stand still."

Mr. Floyd was partly in the car and still struggling when Chauvin – he was the senior officer on scene – gave up. He pulled Mr. Floyd out, pushed him to the ground and held him there. Officers Kueng and Lane assisted by holding the man's back and legs. That's when that infamous, final video takes over. It depicts Chauvin pressing his left knee against the right side of Floyd's neck.

What's Chauvin trying to do? We saved the online use of force section of the Minneapolis PD manual and posted it here. It authorizes two control techniques that involve the neck:

- Choke Hold: Deadly force option. Defined as applying direct pressure on a person's trachea or airway (front of the neck), blocking or obstructing the airway…

- Neck Restraint: Non-deadly force option. Defined as compressing one or both sides of a person's neck with an arm or leg, without applying direct pressure to the trachea or airway (front of the neck)…

  Conscious Neck Restraint: The subject is placed in a neck restraint with intent to control, and not to render the subject unconscious, by only applying light to moderate pressure…

  Unconscious Neck Restraint: The subject is placed in a neck restraint with the intention of rendering the person unconscious by applying adequate pressure…

"Choke holds" cut off oxygen and can kill so are considered a last resort. But supposedly safer "vascular control" techniques remain in widespread use. "Carotid restraints," applied by pressing on the sides of a neck, can supposedly more safely render a person unconscious by sharply reducing blood flow to the cerebral cortex.

While not without controversy, these holds remain widely accepted by the policing community and continue to be taught in academies (click here for the California POST manual section).

Officers are well aware of the risks posed by chokeholds and usually avoid them. Chauvin is depicted applying a carotid restraint, the so-called "conscious neck restraint" described in the M.P.D. manual. However, even this lesser form is only supposed to be used "against a subject who is actively resisting" (M.P.D. section 5-311, emphasis ours). Here's how that's defined (sec. 5-302):

> Active Resistance: A response to police efforts to bring a person into custody or control for detainment or arrest. A subject engages in active resistance when engaging in physical actions (or verbal behavior reflecting an intention) to make it more difficult for officers to achieve actual physical control. (10/01/10) (04/16/12)

And here's its lesser cousin:

> Passive Resistance: A response to police efforts to bring a person into custody or control for detainment or arrest. This is behavior initiated by a subject, when the subject does not comply with verbal or physical control efforts, yet the subject does not attempt to defeat an officer's control efforts. (10/01/10) (04/16/12)

Well, we're stumped. Passivity requires that one "not attempt to defeat" control efforts. But even "verbal behavior reflecting an intention" constitutes "active" resistance. So as far as M.P.D. rules go, "passive" resistance doesn't really exist. Chauvin apparently capitalized on that ambiguity to apply a neck restraint to a physically immobilized person literally to his heart's content.

In our view, why he did so was obvious: as punishment, and as a public shaming. That his motive was impure seems evident from his impassivity, his "look of indifference" in the face of Mr. Floyd's obvious distress. According to the criminal complaint, Mr. Floyd complained "he could not breathe" before being taken to the ground. And once he was down, his pleas persisted. Their obvious authenticity didn't just worry spectators. Lane, the officer who brought Mr. Floyd from his car, also expressed concern. But Chauvin, the late-comer, overruled him. Here's another outtake from the charging document:

> The defendant placed his left knee in the area of Mr. Floyd's head and neck. Mr. Floyd said, "I can't breathe" multiple times and repeatedly said, "Mama" and

> "please," as well. The defendant and the other two officers stayed in their positions. The officers said, "You are talking fine" to Mr. Floyd as he continued to move back and forth. Lane asked, "should we roll him on his side?" and the defendant said, "No, staying put where we got him." Officer Lane said, "I am worried about excited delirium or whatever." The defendant said, "That's why we have him on his stomach." None of the three officers moved from their positions.

Cause of death was initially attributed to a combination of factors. According to the complaint, the medical examiner reported "no physical findings that support a diagnosis of traumatic asphyxia or strangulation." Instead, Floyd's death was attributed to forceful restraint by police, existing health problems including "coronary artery disease" and "hypertensive heart disease," and the possible presence of intoxicants.

That soon changed. On June 1st. the Hennepin County Medical Examiner released an "update" that directly blames use of force for causing Mr. Floyd's heart to stop beating:

> Cause of death: Cardiopulmonary arrest complicating law enforcement subdual, restraint, and neck compression
>
> Manner of death: Homicide
>
> How injury occurred: Decedent experienced a cardiopulmonary arrest while being restrained by law enforcement officer(s)
>
> Other significant conditions: Arteriosclerotic and hypertensive heart disease; fentanyl intoxication; recent methamphetamine use

While factors other than force were present, the examiner concluded that they alone would not have caused Mr. Floyd to suffer the episode. It took force to cross the lethal threshold.

As the report explains, "homicide" doesn't ascribe blame. Indeed, should officers encounter a lethal threat, homicide can be justifiable. That, of course, isn't what they faced here. Chauvin must argue that the death was accidental, and had he believed that Mr. Floyd was having problems breathing or had he known about those "other significant conditions" he would have stopped using force and summoned an ambulance.

But an autopsy performed by doctors hired by Mr. Floyd's family reached a dramatically different conclusion. According to one of the physicians, Dr. Allecia

Wilson, “there is evidence in this case of mechanical or traumatic asphyxia.” In other words, that substantial direct pressure was applied to Mr. Floyd’s neck and deprived him of oxygen. If her account holds up, Chauvin’s good-faith defense crumbles, as even M.P.D.’s loosey-goosey policy defines pressing on someone’s neck to restrict oxygen intake – a chokehold – as deadly force. And there was clearly no reason to apply lethal force here.

We’ll leave the legal dispute for lawyers and courts to hash out. Let’s address the human factors that determine how policing gets done. With ex-cop Chauvin and Mr. Floyd we have two very hard heads. Neither seemed the type to be overly concerned with what others want. Beginning with Mr. Floyd, a search of court files revealed that he had accumulated an extensive criminal record while living in Houston. Here’s an abbreviated version of the summary from the Harris County court:

114323001010	The State of Texas vs. FLOYD, GEORGE (SPN: 01610509) (DOB: 10/14/1973)	11/27/2007	AGG ROBBERY-DEADLY WPN (F)
105047301010	The State of Texas vs. FLOYD, GEORGE PERRY (SPN: 01610509) (DOB: 10/14/1973)	12/15/2005	POSS W / INT DEL / MAN 1 >=4<200G (F)
097658901010	The State of Texas vs. FLOYD, GEORGE PERRY (SPN: 01610509) (DOB: 10/14/1973)	2/6/2004	MAN / DEL CS PG I <1GRAM (F)
115177701010	The State of Texas vs. FLOYD, GEORGE (SPN: 01610509) (DOB: 10/14/1973)	1/3/2003	TRESPASS PROP / BLDG-(M)
092886901010	The State of Texas vs. FLOYD, GEORGE LEE (SPN: 01610509) (DOB: 10/14/1973)	10/29/2002	POSS CS PG 1 <1G (F)
107577801010	The State of Texas vs. PERRY, FLOYD (SPN: 01610509) (DOB: 10/14/1973)	8/29/2001	FAIL IDENT TO P-O-FUGITIVE (M)
984955901010	The State of Texas vs. FLOYD, GEORGE (SPN: 01610509) (DOB: 10/14/1973)	12/9/1998	THEFT - $50-$500 (M)
079379601010	The State of Texas vs. FLOYD, GEORGE (SPN: 01610509) (DOB: 10/14/1973)	9/25/1998	THEFT FROM PERSON (F)
075978001010	The State of Texas vs. FLOYD, GEORGE (SPN: 01610509) (DOB: 10/14/1973)	8/3/1997	MAN / DEL CS PG I <1GRAM (F)

Mr. Floyd’s most serious conviction, for aggravated robbery with a deadly weapon, stemmed from a November 2007 incident in which he reportedly invaded a home and pointed a handgun at its occupant. Mr. Floyd pled guilty in 2009 and drew a five-year prison sentence. After his release he relocated to Minneapolis. A Hennepin County record search turned up two misdemeanor convictions, both for no driver license, one in 2017 (27-VB-17-250861) and another in 2018 (27-VB-18-128822). Then came May 25th. and the bogus $20 bill.

Chauvin was a nineteen-year veteran of the Minneapolis force, which he joined in 2001. A search at the “police conduct resources” page of the Minneapolis Dept. of Civil

Rights website revealed that he was the subject of twelve formal citizen complaints, all filed between 2003 and 2015. Each was marked as closed without discipline, and the details are recorded as non-public.

Office of Police Conduct Review Complaints

OPCR Focus..	Matternumber	Case Status	Discipline Im..	Public Allegation
Chauvin, Derek	12-3244	Closed	No Discipline	Non-Public
	13-09814	Closed	No Discipline	Non-Public
	13-10527	Closed	No Discipline	Non-Public
	13-32189	Closed	No Discipline	Non-Public
	14-14106	Closed	No Discipline	Non-Public
	14-23776	Closed	No Discipline	Non-Public
	15-12394	Closed	No Discipline	Non-Public

Civilian Review Authority Complaints (Prior to 9/23/2012)

CRA Focus ..	Matternumber	Status Descr..	Chief S Actio..	Allegation (group)
Chauvin, Derek	03-1999	Closed	No Discipline	Non-Public
	04-2100	Closed	No Discipline	Non-Public
	05-2306	Closed	No Discipline	Non-Public
	09-2643	Closed	No Discipline	Non-Public
	09-2680	Closed	No Discipline	Non-Public

However, a *CNN* investigation found eighteen complaints, with two leading to discipline, in both cases written reprimands for using demeaning language. A deeply detailed *NBC News* piece notes that Chauvin was present during several encounters over the years when suspects were shot. But the only occasion in which he shot someone was in 2008, when he wounded a man who allegedly went for Chauvin's gun. Chauvin was awarded a medal for valor. Most recently, in 2011, he and other officers were praised for resolving an incident involving an armed man.

To this observer, a dozen formal complaints seems like a lot, even over nineteen years. A retired Minneapolis officer and college educator conceded that it does appear "a little bit higher than normal." But Chauvin was never a desk cop. He obviously liked to mix it up. In fact, he held a long-time second job as a weekend bouncer at a local dance club. A former owner praised Chauvin and said they had been friends. But her "main guy" had a temperamental side. "I've seen him in action and I've seen him lose it and

I've called him out on it before. I've told him it's unnecessary and unjustified some of the ways that he behaves. He just loses it."

Chauvin was by far the most senior officer on scene. His partner, Tou Thao, had about eight years on the job, while Lane and Kueng were both rookies. We speculate that Chauvin's temperament and seniority led him to take charge of the encounter and to do it *his* way, unorthodox as it may have been. Actually, in the policing business, unwelcome intrusions from experienced cops who think they've got all the answers aren't uncommon. And the consequences have occasionally proven devastating. For example:

- In October 2014 Chicago cop Jason Van Dyke, a 14-year veteran, butted in on officers as they actively contained a youth who had been prowling parked cars and was waving a knife. He emptied his pistol within six seconds, killing 17-year old Laquan McDonald. (Van Dyke's partner reportedly kept him from reloading.) Van Dyke was eventually convicted of second-degree murder.

- Two years later, NYPD Sgt. Hugh Barry arrived at a residence where patrol officers were carefully managing Deborah Danner, a mentally ill 66-year old woman who had gone berserk. Sgt. Barry instantly moved to grab Danner, leading her to flee into a bedroom and grab a baseball bat. He promptly followed and, as she took a swing, shot her dead. Tried for 2nd. degree murder, Sgt. Barry was acquitted by a judge. New York settled a lawsuit with the family for $2 million. What to do? Here's some self-plagiarism from our post about Danner:

  Police protocols should place those most familiar with a situation – typically, the first officer(s) on scene – in charge, at least until things have sufficiently stabilized for a safe hand-off. Officer Rosario and his colleagues had been monitoring the disturbed woman and waiting her out. Had Sgt. Barry taken on a supportive role, as supervisors routinely do, and let her alone, a heart-warming Hollywood ending might have been far more likely.

Mr. Floyd's killing has propelled yet another drive to devise newfangled controls and elaborate systemic solutions. That's likely unstoppable. But from this former practitioner's eye, the real "solution" lies in the craft of policing. It's in the workplace, in the everyday working relationships that influence nearly everything cops do. For example, there's not an officer out there who hasn't had a peer or superior step in and "mess things up," nor one who's never worried about a temperamental colleague, say, "Joe," that unpredictable, annoying officer on swing shift.

Officers successfully handle difficult characters like Mr. Floyd every hour of every day. Alas, these triumphs always seem to fly “under the radar.” What makes them possible? How do they come about? That’s what we should be examining at roll call.

Posted 3/16/21

TRIAL OF DEREK CHAUVIN: SLUGGING IT OUT *BEFORE* THE FIGHT

Pretrial evidentiary battles give the State a decided edge

For Police Issues by Julius (Jay) Wachtel. On Monday, March 8, just as we found a comfortable place from which to watch the first-ever nationally televised trial of an allegedly murderous ex-cop, there came the disturbing news that prosecutors wanted the Court of Appeal to suspend the proceedings. Their action was prompted by the court's decision to dismiss the third-degree murder count because there was no proof that Derek Chauvin's actions had been "eminently dangerous to others," meaning someone other than George Floyd:

> 609.195 MURDER IN THE THIRD DEGREE. (a) Whoever, without intent to effect the death of any person, causes the death of another by perpetrating an act eminently dangerous to others and evincing a depraved mind, without regard for human life, is guilty of murder in the third degree and may be sentenced to imprisonment for not more than 25 years.

That seems clear enough. But obfuscation is the law's bread-and-butter. In a recent, mind-bogglingly complex decision the appellate court let another former cop's third-degree murder conviction stand although he, too, had only targeted a single person. But the trial judge in this case reasoned that the decision lacked precedential value as it was under appeal to the state supreme court. This clearly miffed the appeals panel, which promptly ordered that the trial judge "reconsider" things. Prosecutors also worried; should a problem arise during trial, it might be preferable to give jurors a place to land

other than second-degree manslaughter, a lesser charge that lacks the punch of "murder".

They didn't have long to wait. On the third day, with six jurors already seated, the judge caved and reinstated the 3rd. degree murder count. Bottom line: Chauvin will stand trial for second-degree murder, third-degree murder and second-degree manslaughter, just as the State originally intended.

And that's only a small slice of the duel. As required, Chauvin's lawyer disclosed the defenses he will argue at trial. There are three: Chauvin had to protect himself, he used reasonable force, and he obeyed the requirements of Minnesota use of force law. Prosecutors will seek to prove otherwise. They are anxious to demonstrate that the George Floyd episode was not an outlier and that Chauvin regularly used compliance techniques that he knew presented a lethal threat. Fierce battles are underway over what evidence will be admitted. Here are some highlights, with links to the actual documents.

Motions by the defense

Minnesota Rule 404, which regulates the use of character evidence, allows defendants to bring up a "pertinent trait of character of the victim of the crime" (meaning, in this case, George Floyd.) In August 2020 Chauvin and co-defendant J. Alexander Kueng moved to introduce evidence of a May 6, 2019 episode in which police moved in as Floyd dealt drugs:

> When approached by police he placed drugs in his mouth in an attempt to avoid arrest, and swallowed them. When interacting with police he engaged in diversionary behavior such as crying and acted irrationally.

Officers took Floyd to the hospital. That's when he allegedly told medical staff that he "snorts oxycodone daily…and has been abusing opiates for the last year and a half." And should jurors not get too worked up over low-level drug dealing, Chauvin's lawyer had (that's right, *had*) a real ace up his sleeve:

> Mr. George Floyd, under the pretenses of being with the water department and thoughtfully disguised by wearing a blue uniform, forcibly entered a home to steal drugs and money. In the course of the robbery Mr. Floyd placed a gun on a woman's abdomen, allowed her to be pistol whipped by an accomplice and demanded drugs and money.

"Punishment Isn't a Cop's Job" sets out George Floyd's substantial criminal record in his home state of Texas, where he served a prison term for the robbery. Chauvin's lawyer

probably figures that if this couldn't shatter Floyd's guise as a victim and destroy his credibility, nothing can.

On January 15, 2021 Chauvin's lawyer announced his intention to introduce medical and other "scientific" testimony about Floyd, perhaps including a psychological assessment, from Dr. David Fowler and his colleagues at "The Forensics Panel." And on February 8 he submitted a comprehensive, thirty-seven point motion that, in part, sought to keep all "citizen complaints" about his client, whether or not sustained, out of the trial. He also wants to bar other cops from opinionating about his client's techniques, and paramedics from speculating about the cause of Floyd's death.

A key area of concern is the private autopsy performed by Dr. Michael Baden, who attributed Floyd's death to pressure on the neck. That's led the defense to vigorously oppose introducing medical exams not performed by the County medical examiner. His initial autopsy report ruled out "life-threatening injuries" and noted that Floyd's system brimmed with powerful drugs. (An update, however, mentioned that Floyd had been physically restrained and classified his death as a "homicide." Still, the most proximate official cause of death remains "cardiopulmonary arrest.")

George Floyd's demise was a public spectacle, and anyone who observed his treatment could ostensibly testify as to what they saw. Fearing that she might "spin" things in an uncomfortable way, the defense opposed "speculation" by Genevieve Hanson, an off-duty firefighter who reportedly begged officers to check Mr. Floyd's pulse. Chauvin's lawyer is also worried about a man who berated police during the encounter (his words were captured by an officer's bodycam):

> He is not even resisting arrest. You think that's cool? What's your badge number? You're a bum for that. You're a bum for that, bro. He's not responsive right now. You call what he's doing OK?

Donald Williams can't be kept off the stand. But the defense vigorously objected to any mention that he's an expert in the martial arts.

Motions by prosecutors

Prosecutors well know that anything that makes George Floyd look bad could sway juror sympathies in the defendant's direction. In a lengthy, mind-numbing brief prosecutors oppose any reference to Mr. Floyd's past behavior. They argue, for example, that the circumstances of Floyd's drug arrest/drug ingestion a year earlier were "markedly dissimilar" from what Chauvin and his helpmates encountered on that fateful

day. Maybe Mr. Floyd *did* pop a pill; maybe he didn't. Either way, mentioning it would prejudice the jury. Ditto his robbery conviction.

Prosecutors are also naturally eager to make Mr. Floyd seem as "normal" as possible. On February 8 they moved to bar the admission of a series of slides about Excited Delirium, a potentially lethal condition that can supposedly stop the heart of heavy drug users who become overly agitated. (Indeed, Thomas Lane, the first cop to interact with Floyd, expressed concern that he might be in the clutches of this syndrome.) Prosecutors have also filed a motion that seeks to restrict Dr. Fowler's testimony to what he personally knows and does not include assessments made by other members of "The Forensic Panel."

Rule 404 isn't just about victims. Its provisions allow the State to prove a defendant's "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident" with "clear and convincing evidence" of past "crimes, wrongs or acts." Its probative value, though, must outweigh the "potential for unfair prejudice."

To prove that Chauvin breached established law enforcement standards and violated Minneapolis PD policy prosecutors intend to bring in MPD training materials. And to demonstrate that Chauvin's use of force against Mr. Floyd was nothing new they moved to admit seven instances since 2014 in which he allegedly applied pressure to the neck area of prone suspects. Here's one example:

> On June 25, 2017, Defendant restrained an arrested female by placing his knee on her neck while she laid in prone position on the ground. Defendant shifted his body weight onto the female's neck and continued to restrain the female in this position beyond the point when such force was needed under the circumstances.

In an earlier episode Chauvin reportedly observed his colleagues use a similar approach on a "suicidal, intoxicated, and mentally-disturbed male":

> Defendant observed other officers fight with and tase the male [and] place the male in a side-recovery position, consistent with training…Officers…received a commendation for their appropriate efforts and received feedback from medical professionals that, if officers had prolonged their detention of the male or failed to transport the male to the hospital in a timely manner, the male could have died.

Did Chauvin know that a forceful, "prolonged detention" of the kind he favored could prove fatal? If so, Bingo!

Prosecutors have vigorously objected to defense motions that would restrict testimony from other police officers. On March 4 they filed a lengthy, highly detailed motion insisting that Chauvin's colleagues be allowed to testify as to how Floyd's arrest should have been handled "in light of Minneapolis Police Department (MPD) policies and training." They also rejected the defense attempt to limit the testimony of passers-by Hanson and Williams.

Outcomes

So far the State seems well ahead. On January 26, 2021 the judge ruled that the defense could not bring up George Floyd's drug arrest. Nor his alleged comments about drug use. Nor his conviction. Prosecutors, on the other hand, got the green light to cite one prior example (that 2017 episode with the female) of Chauvin's use of the problematic restraint technique. And as long as there was "clear and convincing evidence" that Chauvin heard their comments, what hospital staffers said about the restraint technique's potentially lethal effects also got the green light.

Both passers-by were also cleared for takeoff. While the judge barred Ms. Hanson from saying that "she could have saved" Mr. Floyd's life, the firefighter will nonetheless be allowed to discuss her training and experience. She'll be able to mention "indications Mr. Floyd was in medical distress" and opine that "medical intervention should have been started." Mr. Williams, in turn, was cleared to mention his martial-arts background. And even to mention "blood chokes." Oops!

Full stop. On Friday, March 12, Minneapolis settled the lawsuit filed by George Floyd's family for a record-breaking $27 million, assertedly "the largest [payout] in a civil rights wrongful death lawsuit in U.S. history." Attacking the settlement's "very suspicious" timing and "incredible propensity to taint the jury pool," the defense moved for a delay. But while the judge seemed troubled ("I wish city officials would stop talking about this case so much") he kept things moving along. As of this writing nine of fourteen jurors (twelve plus two alternates) have been seated, and seven will be recalled so they can be questioned about their reaction to the settlement.

We'll have more to say during the trial. Stay tuned!

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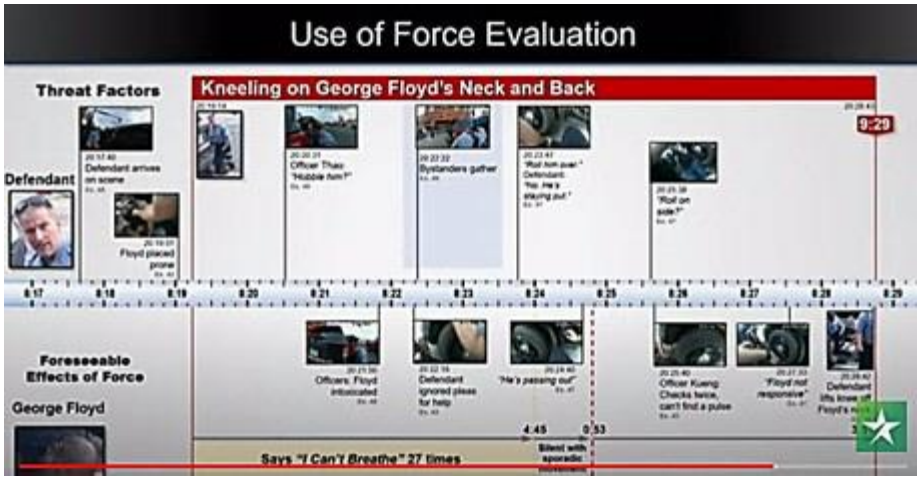
TRIAL OF DEREK CHAUVIN



Pretrial Motions

Week 1: Opening Arguments Day 1 Day 2 Day 3 Day 4 Day 5

Week 2: Day 6 Day 7 Day 8 Day 9 Day 10

Week 3: Day 11 Day 12 Day 13 Day 14

Week 4: Day 15 Closing arguments Jury instructions Verdict

Post-trial motions

WEEK 1

Opening Arguments (3/29)

During his lengthy, hour-plus statement, Prosecutor Jerry Blackwell focused on three arguments:

- Chauvin "betrayed" his responsibilities as a cop by using force that was excessive by Minneapolis Police regulations alone
- Chauvin applied a neck restraint, a practice that presents an "imminent" risk of death

- That neck restraint cut off Floyd's oxygen and caused his heart to stop beating. This - not Floyd's drug abuse - caused his death

That last point is the trial's key issue. Turning Floyd's "problems with addiction" to the State's advantage, prosecutor Blackwell pointed out that Floyd had for years survived drug abuse, high blood pressure and heart disease only to die at the hands of a brutal cop. A time line (see above) was repeatedly used to emphasize Chauvin's "impassive" application of a lethal restraint technique for "nine minutes and twenty-nine seconds." About halfway through, after uttering "I can't breathe" twenty-seven times, Floyd fell silent. But Chauvin persisted until his victim was loaded into an ambulance.

Prosecutor Blackwell's forceful comments, extensively supplemented with graphic images, were an admittedly tough act to follow. As the *Washington Post* pointed out, he also had virtually unlimited human and material support. In contrast, Chauvin's defense lawyer, Eric Nelson, is basically going it alone. That seemed evident from Mr. Nelson's subdued tone and his presentation's far shorter duration. Mr. Nelson's main argument is that Floyd's death was caused by drug abuse:

- Floyd chronically ingested highly dangerous drugs, including the highly toxic combination of fentanyl and meth. He did so on that day. According to his companions, after Floyd got his smokes with that phony bill he fell asleep in the car and they couldn't wake him up.

- There was one (official) autopsy, and it revealed the presence of these drugs. There were no tell-tale signs of asphyxiation and there was no evidence that Floyd's airflow had been restricted. But the State "wasn't satisfied" with that so they turned to "outsiders." A reference to excited delirium suggests that the defense may offer testimony that Floyd's extreme agitation while intoxicated by powerful drugs led his "already compromised heart" to stop beating.

- According to Mr. Nelson, use of force "isn't attractive" but officers sometimes find it necessary. Floyd was a very large man and struggled mightily. Meanwhile an increasingly large crowd of hostile bystanders gathered. Given that "distraction" the cops on scene did the best they could.

What you've read is based on our viewing of the opening arguments. For the *Minneapolis Star-Tribune's* far more extensive take click here. And to watch the trial, click here.

PROSECUTION CASE

Day 1 - Monday, March 29 (for the trial video click here)

Jean Scurry, a 9-1-1 operator, took the call from the convenience store where Floyd passed a counterfeit bill. City surveillance cameras let her watch as officers removed Mr. Floyd from a squad car and forcefully placed him on the ground. Alarmed by their protracted use of force, she notified a patrol supervisor. A record of that call was played to the jury:

> I don't know, you can call me a snitch if you want to… but we have the cameras up for [squad] 320's call, and…I don't know if they had to use force or not, but they got something out of the back of the squad, and all of them sat on this man, so I don't know if they needed you or not, but they haven't said anything to me yet….

Donald Williams, a mixed martial arts (MMA) fighter, walked up during the incident and saw exactly what the photo depicts. Mr. Williams said that Chauvin's application of pressure to the side of Floyd's neck was just like the "blood choke" used in MMA, when fighters press on one side of the neck to impair blood flow to the brain. Chauvin, he said, repeatedly exerted and released pressure, the so-called "shimmy." That was made evident by movements of Chauvin's shoulder, leg and foot. In reaction, Floyd gasped for air and repeatedly faded away. "He was going through distress because of the knee." Eventually Floyd fell silent. His eyes slowly rolled to back of head and blood came out of his nose. He seemingly had no life left.

Day 2 - Tuesday morning, March 30 (for the trial video click here)

On cross-examination, Donald Williams distinguished between a blood choke, which involves pressure to the side of the neck, and an "air choke," which involves pressing on the front of the neck to cut off oxygen (these are lethal and not used in MMA fights.) Mr. Williams said he's applied and been on the receiving end of blood chokes. They render fighters unconscious within three to five seconds, and its recipients don't promptly recover.

Mr. Williams agreed telling FBI agents that "I wanted to beat the shit out of the police officers." He also admitted calling the officers names. He also admitted threatening an officer who was pushing bystanders away "I dare you to touch me like that I'll slap…out

of you." But Mr. Williams denied he became angrier as the incident progressed. Instead, he remained professional, just as he does in his everyday security work.

Mr. Williams' testimony about the near-instantly incapacitating effects of a "blood choke" seem somewhat inconsistent with how Mr. Floyd reacted to his forceful, protracted detention. It may actually give a slight boost to what seems the defense approach, that Mr. Floyd's poor health, drug abuse and extreme agitation (e.g., "excited delirium") were actually to blame.

Day 2 - Tuesday afternoon, March 30 (for the trial video click here)

Four young passers-by testified. Three were seventeen at the time and one was nine. Each was deeply upset by Mr. Floyd's treatment. They were particularly shocked by Chauvin's impassiveness as he, without letup, pressed a knee against Mr. Floyd's neck. Chauvin's lawyer kept cross-examination brief. He focused on the chaotic scene and its distracting influence on police.

Genevieve Hanson, an off-duty firefighter, was the day's final (and clearly most important) witness. Ms. Hanson, who is 27 and White, has been on the job two years. Out for a stroll, she walked up about five minutes before the ambulance arrived. Ms. Hanson immediately noticed that Mr. Chauvin had a hand in his pocket and "seemed very comfortable, [with] the majority of his weight balanced on top" of his prisoner. But Mr. Floyd was neither talking nor moving. His face "looked puffy and swollen." Based on experience and training, she quickly determined that Mr. Floyd had "an altered level of consciousness to the point that he wasn't responding to painful stimuli." Ms. Hanson said it was critical to confirm that his airway was unobstructed and check for a pulse, and in its absence begin chest compressions. She quickly identified herself as a firefighter and EMT but her offer to help was rudely rebuffed. "You would know better than to get involved," a cop said. At this point in her testimony she began crying.

Ms. Hanson was present when the ambulance arrived. Its attendants didn't examine Mr. Floyd but quickly took him away (it relocated to a calmer spot to offer treatment). On cross-examination Ms. Hanson confirmed that the atmosphere on scene likely prompted a "load and go." She also agreed that the "five or six minute delay" in the fire department's arrival - paramedics didn't get there until *after* the ambulance left - was in her experience "unheard of." Had there not been "some miscommunication between police and [fire] dispatch [paramedics] would have responded much sooner."

Ms. Hanson's testimony was preceded by dramatic bystander video taken during those final moments. We uploaded it here. Two voices are prominent: hers and Mr. Williams', the MMA fighter who testified earlier. It's impossible to come away without

being shocked by Chauvin's impassive yet relentless use of force. Watch the clip: he literally didn't lift his knee until attendants reached down to lift Mr. Floyd into the gurney. (That's why we entitled our original essay "Punishment Isn't a Cop's Job.") So instead of defending the indefensible, Mr. Chauvin's lawyer used the witnesses' testimony to help set the stage for a second defense: that Mr. Floyd would not have died but for delayed medical care caused by bureaucratic foul-ups and a hostile scene.

Day 3 - Wednesday, March 31 (for the trial video click here)

Four witnesses testified. Two citizen observers gave compelling, heart-felt testimony:

Christopher Martin, 19, is the store clerk who accepted the counterfeit $20 bill from Mr. Floyd. He quickly informed his superiors. Mr. Martin later exited the store and watched bystanders gather and loudly protest Mr. Floyd's rough treatment. He testified that he felt "guilt": "If I could have just not taken the bill, this could have been avoided." (Click here for a video of Mr. Martin's testimony)

Charles McMillian, 61, was present from the moment that officers tried to place Mr. Floyd in their car. Mr. McMillian tried mightily to convince Mr. Floyd to go along with the police, and even suggested that he could ultimately "win." Mr. McMillian remained on scene and became horrified at Mr. Floyd's treatment. He testified that the victim's protests - "I can't breathe…Mamma, they're killing me" - have stuck in his mind. Yet officers never tried to give Mr. Floyd any medical aid. Mr. McMillian, who had once briefly chatted with Chauvin, testified that he came across the defendant several days before the trial and wished him well. But he also told Chauvin that what he did to Mr. Floyd was wrong and that he now looked on him as "a maggot." (Click here for a video of Mr. McMillian's testimony.)

Aside from manslaughter, Mr. Chauvin has been charged with second and third-degree murder. Neither requires an intent to kill. Third-degree murder carries a 25-year penalty. It requires proof that while "evincing a depraved mind, without regard for human life," an accused committed "an act eminently dangerous to others." Second-degree murder, which is punishable by a forty-year term, requires proof that the accused was "committing or attempting to commit a felony offense other than criminal sexual conduct" and using "force or violence."

Prosecutors are making extensive use of bodycam and security videos and passer-by testimony to prove that Chauvin's relentless, unreasonable use of force and disinterest in Mr. Floyd's health evidenced his depravity and unconcern for life. That could be enough for third-degree murder. Witnesses who will testify about police regulations and practices could help prove that Chauvin's conduct went so far beyond what's

professionally accepted that it breached the threshold of felony assault. If so, it would bring things into second-degree murder territory.

Given the power of the videos, the defense may find it impossible to "normalize" Mr. Chauvin's behavior. Instead, they are under increasing pressure to prove that Mr. Floyd's death was caused by drug abuse and underlying health problems. To that end, one of their best "shots" is that Mr. Floyd was in the throes of excited delirium. During the struggle with Mr. Floyd, officer Thomas Lane mentioned that concern and suggested placing Mr. Floyd on his side. Another officer demurred and said that's why an ambulance was called. Lane's body camera captured the exchange. (Click on the image to play this episode, or here for Lane's entire video.) So Chauvin's lawyer has a problem. If the officers suspected that Mr. Floyd suffered from a dire condition, proving it may actually disadvantage his client, who never stopped pressing his weight against Mr. Floyd's neck.

Day 4 - Thursday, April 1 (for the trial video click here)

Five witnesses testified. **Courteney Ross**, Floyd's girlfriend, spoke fondly about their close and loving relationship. They had been together for three years. Both had battled a "classic" opioid addiction brought on by the use of prescription pain-relievers and wound up buying drugs illicitly. She thought they had weaned themselves off, but Mr. Floyd's recent behavior suggested he had relapsed. Ms. Ross agreed telling the FBI that there were times Mr. Floyd was happy and "bouncing around" and other times when he was "unintelligible." (For her testimony click here.)

Both paramedics who picked up and transported Mr. Floyd testified. They confirmed that he had no pulse, and that they temporarily relocated their ambulance because of the hostile scene. **Fire Department Captain Jeremy Norton** arrived after the ambulance left. During cross-examination, he agreed that his arrival came twelve minutes after the original call was made. He had little information and started looking around for the patient. As he did so he noticed that citizens were very upset. His partner encountered off-duty firefighter Genevieve Hansen, who seemed "agitated to distraught." Capt. Norton learned that his patient was injured while struggling with police, and that paramedics picked him up and relocated. He met with them nearby. Floyd was hooked up to various devices and being actively treated, but he was essentially "an unresponsive body on a cot."

This day's most compelling testimony was offered by the police supervisor on duty during that shift, Sergeant **David Pleoger**. (He has since retired. For his testimony click here.) Sergeant Pleoger said that he first heard about possible problems from a dispatcher, who called him and said "she didn't want to be a snitch" but saw something concerning on camera. Her call was recorded and played in court. In the clip (click here) she mentions that "all of of 'them' sat on this man." But she doesn't offer other details and her tone is light-hearted. Sergeant Pleoger soon spoke with Chauvin by phone (for the clip click here.) Chauvin told him that Floyd became combative, suffered a medical emergency and was taken away by paramedics.

In line with MPD policy, Sergeant Pleoger went to the scene. He spoke with Chauvin and the other officers, then went to the hospital. In line with department regulations about uses of force that "may have been unreasonable or not within policy" (MPD policy manual p. 242) Sgt. Pleoger notified internal affairs and his superiors. He also commented on MPD policies on use of force. Sgt. Pleoger explained that when persons must be heavily restrained they are placed in a "side recovery position" (MPD policy manual p. 246) as being on one's chest and stomach can compromise breathing and lead to positional asphyxia. He said this is taught in the academy and its knowledge is commonplace. But when the prosecutor asked the former police supervisor what *he* thought about Chauvin's use of force, the defense objected. After a discussion away from the jury, the judge allowed his opinion about what he observed on the video of the encounter. It was brief and to the point. "When Mr. Floyd was no longer offering up any resistance to the officers they could have ended their restraint." (Click on image for the brief video clip.)

Chauvin's former superior clearly did him no favors. If the defense gained anything this day, it was to highlight Floyd's long-time drug use and the delay in medical response. So the struggle continues.

Day 5 - Friday, April 2 (for the trial video click here)

Two MPD officers were the only witnesses. **Sergeant Jon Edwards**, who was in charge of the following shift, testified that the encounter with Mr. Floyd was classified as a "critical incident." That changed MPD's role. After taping off the area and securing evidence, which included a police car and Mr. Floyd's vehicle, officers turned the scene over to state agents.

Lieutenant Richard Zimmerman, who heads MPD's homicide unit, was questioned at length. His testimony would prove devastating to Mr. Chauvin. A thirty-

five year veteran of MPD, he is at present its longest-serving officer. Lieutenant Zimmerman joined the agency in 1985 after four years as a sheriff's deputy. He began his career in patrol, but after five years shifted to narcotics investigations. In 1995 he was assigned to homicide, and that's where he's remained.

Lieutenant Zimmerman went to the scene of Mr. Floyd's death to help secure it until State agents arrived. His important testimony was about the use of force. Lieutenant Zimmerman testified about use of force training and MPD use of force policy. He said that officers undergo yearly training in use of force, and described a key aspect, the "use of force continuum." (For a brief clip, click here.) That continuum, he said, ranges from an officer's mere presence, to verbal persuasion, and through intermediate steps such as the use of handcuffs. Ultimately, "if someone is pointing a gun or shooting," it can reach its most extreme level, the application of deadly force. That set the stage for a key question:

> Prosecutor: Have you ever in all the years you've been working for the Minneapolis police department been trained to kneel on the neck of someone who is handcuffed behind their back in a prone position?"
>
> Lieutenant Zimmerman: No, I haven't.

According to the witness, from the moment an officer applies handcuffs it becomes his duty to safeguard a prisoner's well-being. "That person is yours…his safety is your responsibility." Lieutenant Zimmerman said that officers have been long cautioned that handcuffing someone behind their back can impair breathing, and to avoid making things worse handcuffed persons should be sat up or placed on the ground on their sides, and not on their chest or stomach. He also pointed out that officers are trained to perform CPR and are expected, if necessary, to intervene medically even if an ambulance is enroute.

Lieutenant Zimmerman confirmed that he reviewed many videos and observed no change in the amount of force used on Mr. Floyd from the moment he was placed on the ground until paramedics arrived. Then the prosecutor asked the ultimate question:

> Prosecutor: What is your view of that use of force during that time period?
>
> Lieutenant Zimmerman: Totally unnecessary. Pulling him down to the ground face down and putting your knee on the neck for that amount of time is just uncalled for. I saw no reasons why the officers felt they were in danger.

Lieutenant Zimmerman was asked if use of force should have ceased once Mr. Floyd was on the ground, handcuffed and not resisting. His response: "Absolutely I would stop." (Click on the image for a video clip.)

Having little to work with, the defense lawyer obliquely challenged the witnesse's bonafides by pointing out that he hasn't been on patrol, thus routinely exposed to encounters with unpredictable sorts, virtually for decades. Lieutenant Zimmerman didn't argue. (He did mention that his last physical fight was in 2018.) He also agreed that even handcuffed persons can pose a threat. But the impact of his concessions seemed slight. All in all, the long-serving officer's testimony closed the first week with a gut punch that the defense will find difficult to overcome.

WEEK 2

Day 6 Day 7 Day 8 Day 9 Day 10

PROSECUTION CASE CONTINUES

Day 6 - Monday, April 5 (for the trial video click here)

First up was **Dr. Bradford Langenfeld**, the emergency physician who attended to Mr. Floyd and ultimately pronounced him dead. On arrival Mr. Floyd was in cardiac arrest. Paramedics said that they never detected a pulse and applied established cardiac support measures, which he continued. But the patient's heart would never beat on its own "to a degree sufficient to sustain life." Mr. Floyd's high CO2 levels suggested the most likely cause of death as hypoxia, an insufficiency of oxygen. As for other causes, there were no indications of external trauma or of a heart attack. He had no information that Mr. Floyd had complained of chest pain, nor that he had overdosed on medication nor taken any drugs. Dr. Langenfeld had also considered "excited delirium," which he called a "controversial diagnosis," but had no information that Mr. Floyd had displayed extreme agitation, which is one of its signs.

On cross-examination Dr. Langenfeld agreed that certain drugs can cause hypoxia, and particularly fentanyl, which suppresses the respiratory system. That is the drug Mr. Floyd had reportedly been abusing. (For the *Star-Tribune's* summary, click here.)

Police chief Medaria Arradondo was next. Minneapolis' chief since 2017, he holds the distinction of having sued having sued his own agency "for tolerating racism." A Minneapolis native with a Master's degree in Criminal Justice, he joined the agency in 1989 and has served in virtually every role. He was selected as Chief in 1987, after an officer shot and killed Justine Diamond. (That event led to the departure of then-chief Janee Harteau and a $20 million settlement, second only to the $27 million paid to Mr. Floyd's family.)

In his testimony, Chief Arradondo described officers' role as "guardians" and emphasized their obligation to treat people with "dignity and compassion." These values, he testified, lie at the core of MPD's "professional policing policy" (MPD manual sec. 5-1204.01, p. 218.) One requirement, which he read aloud, was to minimize the length of detention.

Chief Arradondo stressed de-escalation. "Trying to provide an opportunity to stabilize the situation, de-escalate it; the goal is to have a faith in people outcome." He said it became a hot topic at MPD because of an incident several years ago. (MPD has experienced a string of use-of-force disasters. Click here.) Last revised in 2016, MPD's de-escalation policy instructs officers to consider several factors. Chief Arradondo highlighted two: citizens may be under the influence of alcohol or drugs or experiencing a "behavioral crisis." Referring to the MPD's crisis intervention policy (MPD manual sec. 7-809, p. 427) he mentioned that de-escalating so as to avoid using force is official policy, even for suspects who may have themselves brought things on.

According to the witness, MPD officers receive training and have basic tools to provide first aid, from aiding ventilation to stopping bleeding, and often do so with success. Policy requires they act even if EMS is responding (MPD manual sec. 7-350, p. 382.) Officers also have NARCAN for drug overdoses.

Questioning then turned to *the* issue of the day: use of force (MPD manual sections beginning at 5-301, p. 228.) Chief Arradondo explained the goal as "sanctity of life," meaning officers and citizens both. Force, he explained, is "any physical contact" that might harm or injure. MPD policy and State law (sec. 609.06) requires it be "objectively reasonable." He discussed three considerations from the leading Supreme Court case on point, *Graham v. Connor*: severity of the crime, immediacy of the threat, and whether resistance or flight are involved. Asked about the misconduct that prompted MPD's contact with Floyd, Chief Arradondo said it was not a violent crime; considering jail capacity, it would "typically not" lead to a "custodial arrest."

Chief Arradondo testified that the duty to care extends to persons who are resisting. Prosecutors then asked that one question they wished there was no need for. It was about chokeholds and neck restraints. Their witness conceded that the latter had been authorized and taught during training. An outtake from MPD Manual sec. 5-311 was projected. (It's no longer in force.) Restraints were applied to the side of the neck. They were either "conscious," using "light to moderate" pressure, or "unconscious," using "adequate" pressure to render someone, well, *unconscious*.

After that embarrassing interlude - click on the image for the video - the Chief delivered his evaluation of what Chauvin did. He "absolutely does not agree" that Chauvin followed MPD de-escalation policy. Neither did he follow policy on reasonable force. Force has to be "objectively reasonable" and take circumstances and threat to officers into account. Chauvin's application was not a "trained Minneapolis police department defensive technique." Mr. Floyd's facial expression did not reflect "light to moderate pressure." Chauvin should have also stopped applying force when Mr. Floyd stopped resisting, and certainly once he was in distress, then unresponsive. "There was an initial reasonableness," but it quickly went away. Chief Arradondo also criticized the officers for violating policy by not rendering aid.

On cross-examination, the witness conceded that policy had allowed neck restraints. But Chief Arradondo said it was contrary to training to apply it "for an indefinite period of time." He added that threat to officers, severity of crime and medical condition are also important. Given all that, he "vehemently" disagreed that Chauvin's use of force was appropriate. Mr. Floyd's restraint was depicted on video clips taken from cameras in two positions. Chief Arradondo said he was not familiar with the term "camera perspective bias." He agreed that on one clip it seemed that Mr. Chauvin's knee "was more on Mr. Floyd's shoulder blade" than on his neck.

On redirect the prosecutor addressed the Chief's "shoulder blade" comment. Chief Arrandondo said the clips shown had been taken shortly before the ambulance arrived, and that was the first time that Mr. Chauvin's knee was in the shoulder blade area. He said that departmental policy instructs officers to place persons who are being "maximally" restrained or transported on their sides to avoid positional asphyxia.

MPD Inspector Katie Blackwell was the day's final witness. She became a police officer in 2002 and was in charge of training when the incident occurred. She testified that officers are trained about positional asphyxia, excited delirium and opioids, and

that Chauvin received a full day of in-service training in December 2018 on patrol operations and defensive tactics. Inspector Blackwell reiterated the dangers of positional asphyxia and said that officers have for many years been told to place persons on their sides. She also testified that Chauvin's use of his knee was not how officers were instructed to apply the neck restraint then in use; instead, they were told to apply pressure with one or both arms.

> **Neck Restraint:** Non-deadly force option. Defined as compressing one or both sides of a person's neck with an arm or leg, without applying direct pressure to the trachea or airway (front of the neck). Only sworn employees who have received training from the MPD Training Unit are authorized to use neck restraints. The MPD authorizes two types of neck restraints: Conscious Neck Restraint and Unconscious Neck Restraint. (04/16/12)

In all, the questioning highlighted two vulnerabilities in the prosecution's case. When Dr. Langenfeld treated Mr. Floyd and ruled out drugs or "excited delirium" as a cause he was unaware that Mr. Floyd had recently ingested dangerous drugs and was highly agitated and physically aggressive during the initial stages of the encounter. More importantly, as we mentioned in our original essay, "Punishment Isn't a Cop's Job," MPD policy (MPD Manual sec. 5-311) then allowed the use of neck restraints, using an arm *or* leg (see wording above.) Chauvin's relentless application of his knee, while criticized as flawed and excessively lengthy, was not nearly as "out of policy" as the witnesses suggested. What the prosecutor, chief and inspector carefully avoided conceding seems obvious: MPD's policy that allowed neck restraints - since rescinded - was itself deeply flawed from the start.

Day 7 - Tuesday, April 6 (for the trial video click here)

Four officers testified about use of force issues. **Minneapolis Police Dept. Sergeant Ker Yang**, MPD's Crisis Intervention Training Coordinator, was first at bat. He is a 24-year department veteran and holds a doctorate in psychology. Sergeant Yang testified about MPD's decision-making model, which guides officers as they gather information, identify threats, determine if they have authority to act, and settle on the most appropriate approach. On cross-examination, he agreed that officers may need to act in ways that look "bad" and that bystanders may not understand and provoke a "crisis." Creating "time and distance," he agreed, is important to de-escalation. He also agreed that appearing calm and confident and speaking softly are useful when dealing with fraught situations.

MPD Lieutenant Johnny Mercil was next. An officer since 1196, Lieutenant Mercil works in the training division and has served as a use-of-force instructor. He has also been been involved in the martial arts. Lieutenant Mercil emphasized that officers

should use the least amount of force necessary. He introduced a training graphic that indicates officers should reduce the amount of force as resistance lessens. Lieutenant Mercil described the training he gave on neck restraints when they were in use. He testified that policy required suspects be actively resisting before a neck restraint could be applied. The technique then authorized only involved the use of an officer's arms. Lieutenant Mercil described a martial-arts neck restraint that uses one's inner thigh and arm. But that was never adopted into training.

On cross-examination, he agreed that chokeholds involve pressure to the front of the neck, and that the videos did not show Chauvin using a chokehold. Lieutenant Mercil also agreed that rendering someone unconscious with a neck restraint requires pressure to both sides of the neck. He confirmed that using one's body weight to hold a suspect down is occasionally necessary. He also agreed that two of the images depicted Chauvin's knee between Floyd's shoulder blades. On re-direct, Lieutenant Mercil said that when someone is no longer resisting "it's time to de-escalate force." He agreed that holding someone prone can lead to positional asphyxia, and that the risk is increased by adding one's body weight. He reiterated that suspects should not be forcefully held down after they have stopped resisting.

Testimony was also offered by **Officer Nicole Mackenzie**, a six-year MPD veteran and former EMT who coordinates medical support for the agency. She testified that in-service officers receive CPR and "EMR" (emergency medical responder) training every year. In addition, policy requires that in critical medical situations officers must immediately render first aid and not just wait for an ambulance.

On cross-examination, Officer Mackenzie confirmed that EMR is a lower-level form of training than EMT. She also discussed the one-hour block of instruction she teaches at the academy on "excited delirium." Officer Mackenzie testified that persons who exhibit this syndrome are often under the influence of drugs. They may be insensitive to pain, "break things" and display "superhuman strength." She confirmed that occasionally paramedics "load and go" instead of treating persons on scene. She said that one reason was a "hostile or volatile crowd."

Los Angeles Police Dept. Sgt. Jody Stiger, a 28-year veteran of the Southern California force, appeared as an expert on use of force. Sergeant Stiger is currently the sole police officer and use-of-force expert for the agency's Inspector General. He reviewed all available videos about the arrest of Mr. Floyd, as well as reports, MPD manuals and training material. From the beginning, his testimony and the prosecutor's questions would explicitly refer to the standards imposed by *Graham v. Connor*, the

leading Supreme Court decision on police use of force. Here is an outtake about that opinion from our 2017 essay, "An Illusory Consensus":

> *Graham v. Connor*, the Supreme Court's landmark decision on use of force, makes no special distinction as to deadly force. According to Graham, "whether officers' actions are objectively reasonable" must be analyzed "in light of the facts and circumstances confronting them," using "the perspective of a reasonable officer on the scene." These "facts and circumstances" include "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."

Sergeant Stiger was asked about the use of force against Mr. Floyd. "My opinion was that the force was excessive." Considering the lesser severity of his crime - passing a counterfeit $20 bill - "you wouldn't expect to use any type of force." But did his size present a threat? Size, the witness conceded, can increase risk, but threat isn't about a person's size but their actions. Sergeant Stiger noted that Mr. Floyd did at first "actively resist," so the initial use of force was proper. But "once he was placed on the prone position on the ground he slowly ceased his resistance and at that point the officers should have slowed down or stopped their force." (For his remarks click on the image.)

Sergeant Stiger felt that officers used reasonable force in trying to get Mr. Floyd in the car. At that point he was actively resisting. When officers then brought Mr. Floyd out of the car his only aggressive behavior was to kick his legs. Even that, the witness said, soon stopped. Once on the ground, Mr. Floyd "was starting to comply and his aggression was starting to cease." Sergeant Stiger commented on "positional asphyxia." He said it can be brought on by placing a prisoner on their stomach, and avoided by placing them on their side. (It was illustrated with a visual that depicts a prisoner restrained with the "Hobble" and lying on their side.) Sergeant Stiger said he heard Mr. Chauvin refer to a Hobble. It wasn't applied, he thought, because Mr. Floyd had ceased resisting.

Sergeant Stiger's examination was continued to Day 8.

Day 8 - Wednesday, April 7 (for the trial video click here)

L.A.P.D. Sergeant Stiger returned to the stand. He commented on a series of five still images taken during the nine-and-one half minutes he was restrained and on the ground. (Counter-clockwise from top left.) Chauvin had his left knee on Mr. Floyd's neck area and his right knee on his back throughout. He said that none of the three *Graham v. Connor* factors in MPD's use of force rules - severity of crime, immediate threat to officer safety, active resistance - would have allowed the use of force during that period. Once Mr. Floyd was handcuffed and on the ground, "no force should have been used." Sergeant Steiger reiterated the risk positional asphyxia, made even worse by officer body weight.

On cross-examination Chauvin's lawyer pointed out that situational risks are fluid and can abruptly change. Sergeant Stiger agreed. After all, when Chauvin first arrived he observed a large man actively resisting. Sergeant Stiger testified that the officers were then using reasonable force, and agreed that Chauvin could have used a Taser but didn't. He also agreed that handcuffed suspects can continue to present a risk, and if they keep kicking officers may need to use force. Sergeant Stiger said he once had a suspect who passed out come back fighting. He also agreed that photos don't capture shifts in weight.

On redirect, the prosecutor asked two questions: When Chauvin was first encountered was he clearly in distress, and would a "reasonable officer" have taken that into account. "Yes" the sergeant replied to both. He was then asked to comment on the reasonableness of Chauvin's actions, as depicted on the videos. Once again, Sergeant Stiger said that during the period while Floyd was being restrained on the ground, the force used by the defendant "was not objectively reasonable."

Senior Special Agent James Reyerson, Minnesota Bureau of Criminal Apprehension was next. He currently works in a unit that focuses on police use of force and has been the principal agent on this matter. He arrived on scene that evening, gathered evidence, including two $20 bills and a pipe that were in an envelope on the police car, and had the police car and Mr. Floyd's vehicle towed. He reviewed bodycam and bystander videos. He agreed that Mr. Floyd stopped making verbal sounds about

four minutes after he was placed on the ground and stopped moving altogether about three minutes later. However, Agent Reyerson said that Mr. Chauvin kept applying pressure.

On cross examination Chauvin's lawyer played one of the videos and the witness confirmed that he heard Floyd said "I ate too many drugs." But Agent Reyerson changed his mind when on redirect the prosecutor played a longer clip. This time he heard Floyd say "I ain't do no drugs." Then on re-cross examination he watched a video depicting activity in and around Floyd's car, which remained parked across the street during Floyd's detention. He agreed with the defense lawyer that it seemed a man was throwing something away, and that their doing so may have been prompted by the police presence.

Three forensic technicians also testified. The pipe that officers removed from Mr. Floyd's car tested positive for THC (marijuana.) Blood stains in the police car's back seat area were matched to Mr. Floyd. A partial pill and "remnants" found in the police car were also positive for his DNA. These, along with two pills found in the center console of Mr. Floyd's vehicle (photo, tagged as exh. #48) tested positive for methamphetamine and fentanyl.

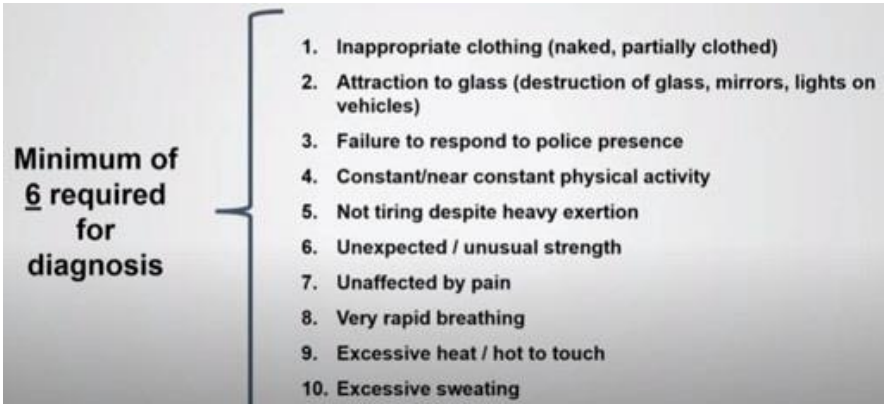
Day 9 - Thursday, April 8 (for the trial video click here)

Three medical experts testified. **Dr. Martin Tobin**, a Chicago pulmonary and critical care physician was first. He presented a graphic and seemingly compelling account. After studying the videos, he concluded that Mr. Floyd's prone position, the officers' tight physical hold, and particularly Chauvin's pressure with his knees on the neck and elsewhere, "enormously impaired" Mr. Floyd's ability to breathe. Dr. Tobin estimated that in the infamous photo Chauvin in effect exerted half his body weight on Mr. Floyd's neck. Among other things, this severely compressed his hypopharynx, a tube that passes air to the lungs. Dr. Tobin said that he visually observed Mr. Floyd lose consciousness at 8:24:53 (click on image at left for a brief video.) He testified that Mr. Floyd stopped breathing at 8:25:16, and that twenty-five seconds later "there was not an ounce of oxygen left in his body." But Chauvin's knee remained on Mr. Floyd's neck for another three minutes.

On cross-examination, Dr. Torbin testified that fentanyl depresses respiration within about five minutes of ingestion. The defense attorney then pointed out that a tablet containing fentanyl along with residue were found in the back of the police car in which officers struggled with Chauvin, and that the struggle took place about five minutes before he apparently stopped breathing.

Forensic toxicologist Daniel Isenschmid was up next. He testified that Mr. Floyd's blood fentanyl concentration was far lower than what was found in a large sample of homicide victims, and only slightly higher than in a sample of persons arrested for DUI. His methamphetamine blood levels were also very low. On cross-examination Dr. Isenschmid conceded that that in the deaths by homicide sample, the actual causes of death, whether by shooting, drugs or a combination of the two, was unknown.

He was followed on the stand by **Dr. Bill Smock**, an expert in medical forensics and former E.R. doctor. He said he reviewed videos, medical records and police reports in great detail. Dr. Smock testified that in his opinion, Mr. Floyd died from positional asphyxia caused by pressure on his chest and back. Dr. Smock said he had considered "excited delirium" and discussed the syndrome at length. He said that while it's controversial and remains unaccepted by either the AMA or APA - "in my opinion it is real."



Excited delirium *is* accepted by the American College of Emergency Physicians. According to Dr. Smock there are ten symptoms, of which six must be present for a diagnosis. He went through the list and said that none applied to Mr. Floyd. He was verbally responsive, "answering appropriate questions, giving appropriate answers" (item 3.) His activity level wasn't "ninety miles an hour" (item 4.) And he *did* tire, "to the point where he stops breathing" (item 5.) As for unexpected strength, Mr. Floyd wasn't able to "throw those police officers off who have him on the ground." He also repeatedly

complained of pain, and emergency room doctors found him cool to the touch. Neither did he seem to be sweating.

Dr. Smock's opinion about the applicability of ExDS to this case seemed purposely tilted in the State's favor. But it wasn't challenged on cross-examination. Instead, Chauvin's lawyer concentrated on Mr. Floyd's fentanyl/methamphetamine pills. Dr. Smock agreed that these pills could pose special risks and said that he knew a partial pill and residue bearing Mr. Floyd's DNA were found in the back of the patrol car. But he shrugged off the defense lawyer's observation that Mr. Floyd complained he couldn't breathe when he was in that car, without anyone on his back.

Day 10 - Friday, April 9 (for the trial video click here)

Two witnesses testified. Forensic pathologist **Dr. Lindsey Carol Thomas** was first. She said that she had reviewed a host of materials, including the autopsy report, medical records, and photos and videos taken on scene. She agreed that, as shown on the death certificate, Mr. Floyd's death was caused by "cardiopulmonary arrest complicating law enforcement subdual, restraint, and neck compression":

Dr. Thomas said that "cardiopulmonary" meant that neither his heart nor lungs were working. As for the "complicating" wording, it meant that death came because of the officer's actions. In her opinion "the primary mechanism of death is asphyxia, or low oxygen." That, she said, was caused by the forceful restraint and prevented Mr. Floyd's body from functioning as it should. The autopsy ruled out other causes such as a broken neck, or a stroke or heart attack. Videos showed what happened to Mr. Floyd's breathing. "This was not a sudden death" as she would expect from a heart attack, or a gradual, sleepy death as in a fentanyl overdose.

The prosecutor displayed an outtake from the medical examiner's press release. It mentioned "other significant conditions" beyond those listed under cause of death:

Cause of death: Cardiopulmonary arrest complicating law enforcement subdual, restraint, and neck compression

Manner of death: Homicide

How injury occurred: Decedent experienced a cardiopulmonary arrest while being restrained by law enforcement officer(s)

Other significant conditions: Arteriosclerotic and hypertensive heart disease; fentanyl intoxication; recent methamphetamine use

Dr. Thomas did not comment on these. She also criticized recent studies that purportedly show prone restraints are safe as being done in laboratories and having "no resemblance" to real-world situations.

On cross-examination Dr. Thomas confirmed that Mr. Floyd's heart was "slightly" enlarged, that his right coronary artery was ninety-percent occluded, and that exertion and "fight or flight" increase the heart's need for blood and oxygen. Floyd's heart had to work very hard during the encounter. Had he been found dead at home with no police involvement, "I would conclude that his death was caused by heart disease." She confirmed that there is no safe level of methamphetamine, which causes a heart to work harder and increases its need for oxygen. On re-direct, the prosecutor ridiculed the defense attempt to take Mr. Floyd's forceful and prolonged restraint out of the picture. Ms. Thomas stated that as a pathologist what actually took place is critical, and she re-asserted that restraint and neck compression caused Mr. Floyd's death. She also said that the drugs found in Mr. Floyd's system were in very small amounts.

Dr. Andrew Michael Baker, the county's chief medical examiner, took the stand. He had performed the autopsy. Dr. Baker testified that Mr. Floyd's enlarged and diseased heart required extra oxygen, but the narrowing of his coronary arteries interfered. During the altercation stress hormones would have "poured" out and caused the heart to beast faster. "In my opinion, the law enforcement subdual restraint and neck compression was just more than Mr. Floyd could take by virtue of those heart conditions" (click here for a brief video clip.)

On cross-examination Dr. Baker confirmed that he watched videos of the encounter, but only after performing the autopsy. He reiterated that Mr. Floyd's heart condition was very significant, and that he told the D.A. that the autopsy did not reveal physical evidence of hypoxia. Dr. Baker also confirmed telling the D.A. that Mr. Floyd's level of fentanyl would have been fatal "in other circumstances." Had Mr. Floyd simply been found dead at home, Dr. Baker

would have attributed the cause of death to Fentanyl toxicity (click here for a brief video clip.)

WEEK 3

Day 11 **Day 12** **Day 13** **Day 14**

PROSECUTION CASE CONTINUES

Day 11 - Monday, April 12 (for the trial video click here)

Outside the jury's presence, the defense attorney argued that one of Mr. Floyd's passengers that day, "Mr. Hall," gave Texas authorities a recorded statement to the effect that Mr. Floyd ingested drugs and had to be repeatedly shaken awake while they sat in the car after going to Cup Foods. That testimony, he said, is crucial because prosecutors "have gone to great lengths to establish that fentanyl or controlled substances did not play a role in Mr. Floyd's death." Chauvin's lawyer wants to play "Mr. Hall's" statement in court. But "Mr. Hall" has invoked the Fifth, and the State refuses to grant him use immunity. ("Mr. Hall" is the man whom Special Agent Reyerson said threw something away while officers dealt with Mr. Floyd across the street. See Day 8.)

Dr. Jonathan Rich, a cardiologist who works in intensive care, was up first. Many of his patients have low oxygen levels and require help breathing. He said that the cause of death was cardiopulmonary arrest. "It was caused by low oxygen levels, and those low oxygen levels were induced by the prone restraint and positional asphyxiation that he was subjected to." Dr. Rich stated that his prone restraint prevented Mr. Floyd from using the muscles that help one breathe. Dr. Rich testified that neither heart problems nor a drug overdose played a role. Mr. Floyd was never diagnosed with heart disease. He did have high blood pressure, anxiety, and "struggled with substance abuse." But none of these would have caused him to stop breathing. (Click on image for a brief clip of his conclusions.) Dr. Rich specifically ruled out fentanyl and methamphetamines. His review of E.R. records indicated that Mr. Floyd's drug use led him to develop "a high degree of tolerance" which he manifested in his alertness, the opposite of what an overdose would bring. Dr. Rich mentioned that on a video he heard one officer suggest turning Mr. Floyd on his

side. But Chauvin said “no.” An officer also said “he doesn’t have one,” meaning a pulse. Had Chauvin begun CPR it could have saved Mr. Floyd’s life.

On cross-examination, Dr. Rich was asked whether Mr. Floyd would have survived had he simply gotten in the back of the police car. Dr. Rich said that he saw no reason why Mr. Floyd would not have survived that day but for the prone positional restraint. On re-cross he was asked whether a *combination* of factors, including drugs, high blood pressure, coronary heart disease, and increased adrenalin from the struggle could cause death “even in the absence of a prone restraint.” Dr. Rich was asked “yes” or “no.” But he answered in his own way: “Upon my reviews of the facts of this case, I found no evidence to support that.”

Philonise Oneil Floid, 39, George Floyd’s younger brother, was next. He said that Mr. Floyd had been exceptionally close to their mother during his childhood. During her final years she lived with Philonise and his family at their home in Texas. Mr. Floyd was devastated by her death in May 2018 and repeatedly cried “Mama,” “Mama” at her funeral. That was the last time Philonise, a Texas resident, saw his brother. But they stayed in touch. That was the extent of this witnesse’s testimony, and he was not cross-examined.

Seth Wane Stoughton, a law professor, was the day’s final witness. He spent five years as a police officer and has written extensively about use of force and police tactics. Dr. Stoughton relied on the *Graham v. Connor* factors - severity of the crime, immediacy of the threat, and whether there was active resistance or flight - to analyze this case. Dr. Stoughton said that threat comprises the “ability, opportunity and intention” to cause harm. “Risk” (someone’s size, or drug use) infers a potential threat, but can’t by itself justify the use of force. And once he was handcuffed, Mr. Floyd ceased being a threat. After all, he was vastly outnumbered.

Dr. Stoughton’s analysis focused on Chauvin’s use of his knee and on Mr. Floyd’s prone restraint during those nine-plus minutes. He observed that Mr. Floyd’s condition visibly deteriorated. Prone restraint is only supposed to be transitory, and promptly placing someone on their side is crucial to avoid positional asphyxia. Indeed, an officer suggested putting Mr. Floyd on his side. But Chauvin said “no.” A bystander soon announced that Mr. Floyd had passed out, and an officer confirmed it: “he’s passing out.” Mr. Floyd had turned silent, and an officer couldn’t detect a pulse

(click here for a brief video clip.) Yet the restraint continued. On re-direct he agreed a "situationally aware" officer would know that "they're kneeling on top of a limp person."

On cross-examination, Dr. Stoughton insisted that placing an already-handcuffed Mr. Floyd into the prone position "was unreasonable, excessive and contrary to generally accepted police practices." He didn't think that "reasonable minds" would disagree. He openly disagreed with LAPD Sgt. Stiger, a prosecution witness who endorsed the officers' initial use of the prone position (see Day 8.)

DEFENSE CASE

Day 12 - Tuesday, April 13 (for the trial video click here)

Retired MPD officer Scott Creighton was the first witness called by the defense. He spent the last decade of his long career working in a street narcotics unit. His testimony's purpose was limited by the judge to describing the effects opiate use may have had on Mr. Floyd. Ex-officer Creighton related an interaction he and two other officers had with Mr. Floyd, who was a passenger in a vehicle they stopped on May 6, 2019. Mr. Floyd was "unresponsive," "non-compliant," "nervous" and "anxious." One of the other officers repeatedly yelled "open your mouth, spit out what you got." With some difficulty Mr. Floyd was taken out of the vehicle and handcuffed. (Click on the image for the clip.)

On cross-examination ex-officer Creighton said that Mr. Floyd was "incoherent." He agreed with prosecutor's comments that Mr. Floyd could walk, that he "did not collapse on the ground" and that he didn't "drop dead."

Retired Hennepin County paramedic Michelle Moseng was next. She went to the police station to attend to Mr. Floyd during the above episode. Mr. Floyd told her that he had been downing an opioid every twenty minutes and took one as an officer approached. She recorded his blood pressure as 216/160. "Based on that and other issues" Mr. Floyd was taken to the hospital. On cross-examination Ms. Moseng said that Mr. Floyd told her he was taking the pills "because he was addicted."

Shawanda Hill a friend of Mr. Floyd, was third on the stand. She crossed paths with him in Cup Foods on the day of his death. He seemed fine. Mr. Floyd offered to give her a ride home and she accompanied him to his car. While they were parked Ms. Hill was distracted by a phone call. While she was on the phone Mr. Floyd fell asleep.

Employees of Cup Foods then came to the car. She repeatedly tried to wake Mr. Floyd but couldn't. Police officers then came to the car and woke Mr. Floyd.

On cross examination Ms. Hill said "no" when asked if Mr. Floyd complained about shortness of breath or chest pains. She agreed that he otherwise seemed normal.

Minneapolis Park Police Officer Peter Chang was fourth to testify. He was dispatched to back up the MPD officers who detained Mr. Floyd. When he arrived he was asked to watch over Mr. Floyd's car. He went there and shooed away two persons from the car (one was Shawanda Hill, the other was the "Mr. Hall" mentioned in Day 11.) From that vantage point he observed a crowd gather by the MPD officers. "It was becoming loud and aggressive" and he became concerned about their safety. He observed the volume increase and the attitude worsen over time.

On cross-examination officer Chang conceded that he never heard the MPD officers call on the radio for help. He was asked to watch Mr. Floyd's car, and that's what he did.

MPD medical support coordinator Officer Nicole Mackenzie was next. Officer Mackenzie provides academy and inservice training. Academy cadets (but not in-service officers) get training about "excited delirium". Officer Lane, a recent academy graduate, was trained on this syndrome. Ms. McKenzie said that ExDS is evidenced by the presence of multiple symptoms, which can include incoherence, "superhuman strength," hyperthermia, psychotic behavior, and violent resistance. Causes include cardiovascular disease, drug use, and mental health issues. Persons in the throes of an ExDS episode need to be restrained. Medical help must be summoned because ExDS can quickly bring on cardiac arrest.

On cross-examination Officer Mackenzie agreed that ExDS could compromise breathing. She said that officers are told to place persons suffering from ExDS in the side recovery position to facilitate breathing. Officer Mackenzie also confirmed that policy requires officers to initiate CPR if someone becomes unresponsive, and that in-service officers such as Chauvin are regularly trained in CPR.

The day's final witness was **Barry Brodd**. A retired police officer, he testified as a use of force expert. Mr. Brodd said that he has done so extensively around the U.S. Sometimes he's found that officers used too much force. But not in this case. After reviewing videos and other materials, he expressed the opinion that "Derek Chauvin was justified, was acting with objective reasonableness, following Minneapolis Police Department policy." Mr. Brodd said that he uses the

Graham v. Connor standard, which focuses on what a reasonable officer would do under similar circumstances. He agreed that one of its factors, severity of the offense, is important. However, Mr. Brodd pointed out that officers have wound up in a "fight for their lives" even in supposedly ordinary situations.

According to Mr. Brodd, when suspects are resisting, whether they're handcuffed or not, it's best to put them on the ground on their stomach and chest, in a "prone control position" (also "prone restraint position"). That lets officers apply body weight to keep resisters on the ground. Using this procedure with Mr. Floyd, who was in an excited state, wasn't unreasonable (for a clip of this opinion, click on the image.) It was not, in Mr. Brodd's opinion, intended or necessarily likely to produce pain and was thus not a "use of force."

On cross examination, the prosecutor grilled Mr. Brodd about the positions of Chauvin's knees in that infamous photograph. Mr. Brodd conceded that Mr. Chauvin then weighed 140 pounds, and that the photo represented a "use of force." Mr. Brodd said that he had provided instruction on "positional asphyxia." He disagreed that merely lying on one's chest and stomach would bring it on unless someone was "grossly obese." He agreed that being handcuffed or being pressed down on could contribute.

Mr. Brodd was shown extensive videos of Mr. Floyd's protracted restraint. Mr. Floyd was clearly distressed and repeatedly complained "I can' breathe." Mr. Brodd conceded it "possible" that a reasonable police officer would have believed Mr. Floyd. He agreed that Officer Lane warned at least once that Mr. Floyd was "passing out," and that Officer King said he could not detect a pulse. He also agreed that bystanders were objecting. Mr. Brodd conceded that from that point, until EMT's arrived, Mr. Floyd was not resisting, that Chauvin knew that, but that he nonetheless "maintained the same general position."

On redirect Mr. Brodd was asked if a person who had passed out could suddenly come to and become even more violent. He said yes, it had happened to him. He agreed that a reasonable police officer would take this possibility into account.

Day 13 - Wednesday, April 14 (for the trial video click here)

Dr. David Fowler, a forensic pathologist, was the sole witness. He recently retired as Maryland's chief medical examiner. Dr. Fowler testified that after reviewing all available materials, he concluded that Mr. Floyd suffered a "sudden cardiac arrhythmia" during his restraint due to pre-existing vascular and heart problems (click on photo for clip.) Commenting on the coroner's report (see Day 10) Dr. Fowler said he would move up heart disease from "other conditions" to "cause of death." Contributing

conditions included the presence of fentanyl and methamphetamine in his system, potential CO_2 poisoning from the exhaust of the police car that he was lying next to, and the stress of being stopped, which could have cause his blood pressure to spike. Dr. Fowler also referred to studies that concluded prone positions, with or without weight, did not significantly affect respiration. He testified that none of Chauvins' knee placements depicted on the videos affected any of Mr. Floyd's "vital structures." He also rejected hypoxia as a cause. Its onset is very gradual due to the presence of oxygen in the blood. In contrast, Mr. Floyd was "coherent and understandable" until he suddenly ceased moving. He also thought fentanyl was likely involved. He considers it a very powerful narcotic that can interfere with respiration.

On cross examination, the prosecutor repeatedly criticized Dr. Fowler for "trying to confuse the jury." He complained that Dr. Fowler did not add Chauvin's police equipment to his weight, that he suggested without proof that "the white substance" on Mr. Floyd "was a pill," and that he misconstrued another expert's views about the risks of the prone position. Dr. Fowler agreed that it takes four minutes of no supply of oxygen to the brain to cause irreversible damage, and that death always involves a fatal arrhythmia. He conceded that none of the studies he cited that questioned positional asphyxia (they used experimental subjects) involved a knee on the neck or matched the length of Mr. Floyd's forceful detention. He was also reminded about his testimony in an earlier case (see graphic on left) where he said that "the weight of several officers" could cause compressional asphyixia. Dr. Fowler's representation of Mr. Floyd's death as "sudden" (i.e., a heart attack) was also challenged. Dr. Fowler explained that he meant a sudden cardiac arrest. "The moment of death is not something you can easily document." He did agree, though, that Mr. Floyd should have been given prompt medical attention to reverse the cardiac arrest.

14	Q What would it take a police officer to do in
15	that situation to cause compressional or positional
16	asphyxia?
17	A **Well, the compressional specifically would**
18	**require the weight of several officers on the actual**
19	**torso and abdominal area, something that is documented**
20	**in the medical literature as burking, B U R K I N G,**
21	**which is a method of killing people that was made**
22	**popular back in England in the Middle Ages when they**
1	**were looking for bodies to teach medical students**
2	**anatomy.**

Day 14 - Thursday, April 15 (for the trial video click here)

Outside the jury's presence, Chauvin was asked by his lawyer whether he intended to testify. Here is a video clip of his response (click image to play):

REBUTTAL TESTIMONY BY PROSECUTION

Mr. Chauvin elected not to testify, and the defense rested its case.

The State recalled its witness from Day 9 (April 8), **Dr. Martin Tobin**, a pulmonary and critical care physician. He had testified that "Mr. Floyd's prone position, the officers' tight physical hold, and particularly Chauvin's pressure with his knees on the neck and elsewhere, 'enormously impaired' Mr. Floyd's ability to breathe." He promptly discounted defense expert Dr. Fowler's testimony on the prior day that Mr. Floyd might have suffered from CO_2 poisoning. According to Dr. Tobin, Mr. Floyd's blood was analyzed shortly after his arrival at the hospital and its hemoglobin was found to be 98 percent saturated with oxygen. Thus, his CO_2 levels were definitely within the "normal range."

BOTH SIDES REST

Both sides rested. Jurors were asked to return Monday for closing arguments. They were also cautioned that they would be sequestered throughout their deliberations.

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WEEK 4

Day 15 Day 16 Verdict

Day 15 - Monday, April 19 (for the trial video click here)

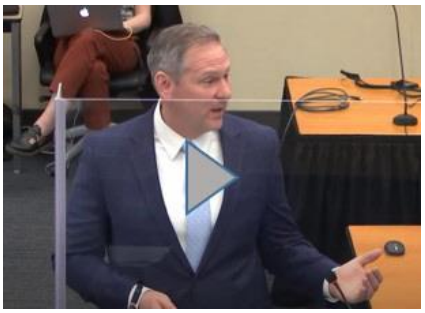
For jury instructions click here

CLOSING ARGUMENTS

Prosecution

Prosecutor Steve Schleicher offered a graphic description of George Floyd's struggle to survive. Trapped between the officers and the pavement, a knee pressing on his neck and another on his back, he couldn't expand his lungs sufficiently to breathe. It was like being squeezed in a vise. Floyd's heart failed because he was deprived of oxygen. His last words to "Mr. Officer" were "please, I can't breathe." Yet despite knowing about the dangers of positional asphyxia and warnings from bystanders and colleagues that Mr. Floyd wasn't breathing, Chauvin relentlessly maintained pressure until an ambulance attendant intervened. "Believe your eyes," the prosecutor implored jurors. "Believe what you saw."

Mr. Schleicher called police work "a noble profession." He insisted that the case "is not a prosecution of the police" but of the defendant. Chauvin's actions, he said, were not what one would expect from a reasonable police officer. Force isn't authorized just because someone is "on something." He violated his own agency's rules on use of force and ignored his responsibility to provide care. "There's a duty to provide medical assistance…You're required to perform CPR." Bottom line: Chauvin committed an "assault." (Click on the image for the prosecutor's comments about murder.)



Mr. Floyd, argued the prosecutor, posed absolutely no threat. He was surrounded, handcuffed and on his knees. "Being large and being on something is not a justification for the use of force." Stricken by anxiety and claustrophobia, he only resisted when officers shoved him into the back of a small squad car. "He wasn't able to bring himself to do it." According to Mr. Schleicher, police frequently deal with people in crisis, and this was no different. Floyd even thanked the officers for bringing him out. Dealing with him only required compassion, but none was shown.

Prosecutor Schleicher emphasized that the State's police officer witnesses, including Chauvin's own former chief, denounced the defendant's behavior (see above graphic.) "These actions were not policing, these actions were an assault." He also ridiculed the testimony of witnesses presented by the defense. "You're not required to accept nonsense," he argued. That "nonsense" included assertions that the prone position did not cause pain, that bystanders were at fault for presenting a distraction, and that vehicle exhaust and "excited delirium" were to blame.

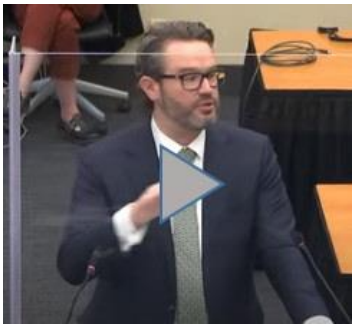
Admittedly, Mr. Floyd did abuse drugs. But the prosecutor pointed to the conclusion by a State medical expert, who found that the tiny quantity of fentanyl in Mr. Floyd's system and his swift death ruled out an overdose. Neither was there any evidence of a "a sudden cardiac arrythmia" or a heart attack. Mr. Floyd's ability to take in oxygen was taken away. It was simple as that.

Defense

Defense lawyer Eric Nelson began by emphasizing that Chauvin arrived to find a large suspect fighting two officers. Under such circumstances, his training gave him several options: one was a "controlled takedown," another a "conscious neck restraint." A "reasonable police officer" would have also recognized that the white foam around Mr. Chauvin's mouth (a graphic photo was shown) suggested that he was on drugs.

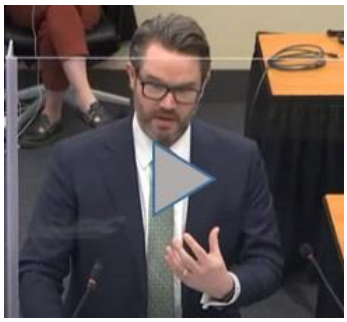
According to Mr. Nelson, everyone agreed that the use of force was reasonable until that "nine minute and twenty-nine second period." By harping on that, he said, the prosecution ignored what had transpired during the previous sixteen-plus minutes, which a "reasonable police officer" *would* take into account. "Human behavior is unpredictable." Police officers know that suspects can quickly become non-compliant. Mr. Nelson also showed a video of the increasingly hostile crowd. He argued that

citizens were displaying “potential signs of aggression,” so officers had to remain calm and nonplussed.



Turning to Chauvin’s use of force, Mr. Nelson stated that an expert endorsed the manner of Mr. Floyd’s restraint, including the “knee on the neck.” Continued restraint, he said, is often necessary because even handcuffed persons can “thrash around” and pose a risk. Mr. Nelson pointed to research findings that demonstrated prone restraints were safe. He argued that in their quest to prove that positional asphyxia was solely to blame prosecutors had experts assert the implausible: that pre-existing health problems including heart conditions, hypertension, drug use, excited delirium, and so on “played absolutely no role” in Mr. Floyd’s death (for some of his remarks click on the image.)

Mr. Nelson criticized prosecution experts as hopelessly biased. He pointed to testimony by a pulmonologist who testified that a video image showed Mr. Floyd trying to push himself off the ground. Citing the time on the clip, Mr. Nelson said that event took place only seconds after Mr. Floyd was placed on the ground, and well before he was turned on his stomach. Mr. Nelson then turned to an image of Chauvin’s knee on Mr. Floyd’s neck. Chauvin’s toes were off the ground. According to a prosecution expert, that proved that Chauvin was exerting great pressure. But when Mr. Nelson played the full clip, it was evident that Chauvin’s toes were constantly going up and down.



Chauvin’s lawyer was particularly critical of prosecution witnesses for dismissing out of hand the likelihood that drugs may have contributed to Mr. Floyd’s death. Yet Mr. Floyd fell fast asleep after returning to the car and his passengers could not wake him up. Methamphetamine - one of the two drugs he ingested - causes the heart’s arteries to constrict. And Mr. Floyd’s right coronary artery was ninety percent blocked. Yet “every single doctor just brushed it aside…It’s preposterous….” (click on the image for his closing remarks.)

Chauvin’s defense lawyer also commented about the delay in getting Mr. Floyd to the hospital. What if the ambulance had not paused enroute? Mr. Nelson said that he wasn’t blaming paramedics. However, their actions reflected the fallibility of well-intentioned decisions that are made “under highly stressful situations.”

POLICEISSUES.ORG

VERDICT

Day 16 - Tuesday, April 20 (for the full verdict video click here)

After deliberating about one day, jurors returned a verdict finding Chauvin guilty of each charge: second-degree murder, third-degree murder and second-degree manslaughter. His bond was revoked. Chauvin will apparently be sentenced in two months. Click on the image for a clip of the reading of the verdict.

Posted 10/10/20

R.I.P. PROACTIVE POLICING?

Volatile situations and imperfect cops guarantee tragic outcomes

For Police Issues by Julius (Jay) Wachtel.

> Banged on the door, no response. Banged on it again no response. At that point we started announcing ourselves, police, please come to the door. So we kept banging and announcing. It seemed like an eternity.

That, according to Louisville police sergeant Jonathon Mattingly, is how the infamous March encounter began. In testimony before a Grand Jury, the supervisor whose bullet (according to the FBI) fatally wounded Breonna Taylor insisted that despite the search warrant's "no-knock" provisions he and his companions, Detectives Myles Cosgrove and Michael Nobles and former Detective Brett Hankinson, loudly announced their presence and only smashed in because no one promptly came to the door.

As soon as they entered chaos erupted. Ms. Taylor's boyfriend, Kenneth Walker, whose presence the officers didn't expect "was standing in the hallway firing through the door." One of his bullets pierced Sergeant Mattingly in the leg. He and detectives Cosgrove and Hankinson returned fire. Walker escaped injury, but bullets fired by Mattingly and Cosgrove fatally wounded Breonna Taylor, the apartment's occupant of record. Meanwhile Hankinson's barrage went wildly off the mark, peppering another apartment but fortunately striking no one.

Kenneth Walker said he thought the officers were criminals breaking in. He was arrested for shooting Sergeant Mattingly but ultimately escaped prosecution. (He blames cops for firing the shot that struck the officer.) In June the police chief fired

Detective Hankinson, who was disciplined a year earlier for recklessly injuring a citizen. And on September 15 the city announced it was settling a claim filed by Ms. Taylor's family for $12 million. That's reportedly one of the largest payouts of its kind, ever.

Grand jurors returned their findings one week later. Neither Mr. Walker nor the officers who unintentionally killed Ms. Taylor were charged. However, former cop Hankinson was indicted for discharging the fusillade that endangered other tenants. He pled not guilty and awaits trial.

It's not surprising that Ms. Taylor's killing has taken on such significance. Compare it with two other recent cases: Mr. George Floyd, who died after being roughly handled by a Minneapolis cop, and Mr. Rayshard Brooks, who was shot dead by an Atlanta police officer during a foot chase. Mr. Floyd and Mr. Brooks fought police; Mr. Brooks went so far as to fire at his pursuer with the Taser he grabbed from another cop. In contrast, Ms. Taylor did absolutely nothing to warrant rough handling. She was in her own apartment, just standing there when officers opened fire. Her killing was clearly a lethal error.

Law enforcement officers serve search warrants and engage in other high-risk activities every day. Many of these episodes involve dangerous characters, yet most conclude peacefully. However, since most research of police use of force focuses on episodes with bad endings, we know little about the factors that underlie successful outcomes. (That gap, incidentally, is the subject of your writer's recent essay, "Why Do Officers Succeed?" in *Police Chief*.)

Given the extreme circumstances that the officers encountered at Ms. Taylor's apartment, return fire by Sgt. Mattingly and detective Cosgrove might have been unavoidable. Tragically, their rushed response proved lethally inaccurate. In "Speed Kills" we mentioned that blunders are likely when officers act hastily or impulsively. Consider the July 2018 episode when, after shooting his grandmother, a Los Angeles man led police on a wild vehicular pursuit. It ended at a retail store where the suspect bolted from his car and ran inside as he fired at the officers. They shot back, missing him but fatally wounding an employee.

Lethal foul-ups also happen when suspects *don't* shoot. In February 2019 late-arriving New York cops unleashed a barrage at an armed suspect who was fleeing the store he just robbed. Two plainclothes officers who were already on scene got caught in the middle: one was wounded and the other was killed. The suspect's handgun turned out to be fake. Seven months later an NYPD officer repeatedly fired at a felon with

whom he had physically tangled. That led arriving officers to mistakenly conclude that they were being shot at. So they opened fire, killing both their colleague and the suspect. His unfired revolver lay nearby.

Police behavior is unavoidably influenced by the well-known risks of the job. And those are indeed substantial. According to the LEOKA more than two-thousand law enforcement officers (2,116) were assaulted with firearms in 2018. About 129 were injured (6.1 percent) and 51 were killed. Unfortunately, the LEOKA doesn't offer detailed information about the encounters, nor of the outcomes for civilians. Last year the FBI launched an effort to collect data about all police uses of force that either involve their discharge of firearms or which lead to a citizen's death or serious injury. So far, nothing's been released. However, the *Washington Post* has been collecting information about police killings of civilians since January 2, 2015. As of October 1, 2020, their database has 5673 entries, one for each death. We downloaded the dataset. This table lists some of the pertinent findings.

Means of death		Citizen armed		Mentally ill		Citizen threat	
Shot	5390 (95%)	Gun	3223 (57%)	Yes	1318 (23%)	Attacked officers	3671 (65%)
Shot & Tasered	283 (5%)	Knife, bladed	987 (17%)	No	4355 (77%)	Other threat	1749 (31%)

Citizens were "armed" with a wide assortment of items, including cars, shovels and (yes) even pens. We included only guns and cutting instruments. Six percent (358) of those killed were unarmed.

In 2017 four academics analyzed the *Post's* 2015 data. Published in *Criminology & Public Policy* (Feb. 2017) "A Bird's Eye View of Civilians Killed by Police in 2015 - Further Evidence of Implicit Bias" concluded that race affected officer threat perceptions. "Controlling" for citywide violent crime rates, the authors concluded that non-Whites, and especially Blacks, were nonetheless significantly more likely to be shot. But more specific "places" such as areas or neighborhoods were *not* taken into account. As we noted in "Scapegoat" Parts I and II proactive policing normally targets areas within cities that are beset by violence, usually poverty-stricken neighborhoods that are disproportionately populated by non-Whites. As our tables in Part II demonstrate, once we "controlled" for location the influence of race and ethnicity on LAPD stops virtually disappeared.

Of course, one need not attribute outcomes such as Ms. Taylor's death – or the killings of Dijon Kizzee in Compton, Jacob Blake in Kenosha, Rayshard Brooks in

Atlanta or George Floyd in Minneapolis – to racial animus to brand them as tragic mishaps. Posts in our Compliance and Force and Strategy and Tactics sections have discussed the forces that drive policing astray and suggested correctives. "Working Scared" stressed the role of personality characteristics such as impulsivity and risk tolerance. "Speed Kills" emphasized the advantage of taking one's time – preferably, from a position of cover. Chaos, a chronic fixture of the police workplace that often leads to poor decisions was the theme of "Routinely Chaotic." And when it comes to preventives there's de-escalation, a promising approach that's at the top of every chief's list.

Back to Ms. Taylor's death. On March 13, 2020 Louisville police executed search warrants at 2424/5/6 Elliott Ave. (pictured here) and at her apartment, 3003 Springfield Dr. #4 (top photo). According to police, Jamarcus Glover, Ms. Taylor's one-time boyfriend, and his associate Adrian Walker (no relation to Kenneth Walker) were using the Elliott Ave. locations as "trap houses" (places where drugs are stored and sold.) Both were convicted felons out on bond awaiting trial for drug trafficking and illegal gun possession charges levied in December 2019.

Here's a summary of the justification provided in the search warrant:

- Mr. Glover and Mr. A. Walker were pending trial on gun and drug charges.

- In January 2020 police stopped Mr. A. Walker as he left the "trap house" and found marijuana and cash in his vehicle. In the same month a pole camera depicted numerous vehicles visiting the trap house during a brief period. There were many recorded and physical observations of suspicious behavior by both suspects in and around the trap house and of visits to a nearby rock pile they

apparently used to stash drugs.

- In January 2020 the affiant observed Mr. Glover and Mr. A. Walker making "frequent trips" between the trap house and Ms. Taylor's apartment. Mr. Glover had listed her apartment as his address and was using it to receive packages. On one occasion Mr. Glover was observed taking a package from the residence to a "known drug house." Ms. Taylor's vehicle was observed parked at the trap house several times.

- In conclusion, the affiant asserted that his training and experience indicated "that Mr. J. Glover may be keeping narcotics and/or proceeds from the sale of narcotics at 3003 Springfield Drive #4 for safe keeping."

In late August the Louisville *Courier-Journal* and Wave3 News published detailed accounts about the alleged connection between Ms. Taylor and Mr. Glover. This story drew from a leaked police report, prepared after Ms. Taylor's death, that describes the evidence detectives gathered before and after executing the March search warrants. It indicates that drugs, cash, guns and paraphernalia were seized from the trap houses and the suspects' vehicles. There are also surveillance photographs and detailed transcripts of intercepted jailhouse calls made by Mr. Glover after his arrests in December and March. Here's an outtake from a January 3, 2020 (pre-warrant) phone call between Mr. Glover and Ms. Taylor:

> 1123 – J. Glover calls ***-***-**** (Breonna Taylor) from booking:
> J. Glover: "Call Doug (Adrian Walker) on Facebook and see where the fuck Doug at. He's got my fuckin money, riding around in my motherfucking car and he ain't even where he's supposed to be at."
> B. Taylor: "You said Doug?" J. Glover: "Yeah, Big Doug."
> B. Taylor: "I'll call him…Why can't I find him on Facebook? What's his name on here?"
> J. Glover: "Meechy Walker."
> 1318 – J. Glover calls ***-***-**** (Breonna Taylor) from booking:
> J. Glover: "You talk to Doug (Adrian Walker)?"
> B. Taylor: "Yeah I did. He said he was already back at the trap… then I talked to him again just a minute ago to see if you had contacted him. They couldn't post bond till one."
> J. Glover: "Just be on standby so you can come get me… Love you."
> B. Taylor: "Love you too."

Here's part of a post-warrant phone conversation between Mr. Glover and a domestic partner who bore his child:

1307 – J. Glover calls ***-***-**** (Kiera Bradley – child's mother) from his dormitory:
K. Bradley: "So where your money at?"
J. Glover: "Where my money at? Bre had like $8 grand."
K. Bradley: "Bre had $8 grand of your money?" J. Glover: "Yeah."
J. Glover says to an unknown male that joined the call, "Tell cuz, Bre got down like $15 (grand), she had the $8 (grand) I gave her the other day and she picked up another $6 (grand)."
K. Bradley and J. Glover are arguing over him not being honest and him having money at other people's house. J. Glover says to K. Bradley, "Why are you doing this?"
K. Bradley: "Cuz my feelings are hurt."
J. Glover: "Why cuz the bread (money) was at her house?"
J. Glover: "…This is what you got to understand, don't take it wrong but Bre been handling all my money, she been handling my money… She been handling shit for me and cuz, it ain't just me."

In a post-warrant call to Mr. Walker, Mr. Glover explains why police searched Ms. Taylor's residence and why, according to Kenneth Walker (Ms. Taylor's live-in boyfriend) the officers didn't find any cash:

1720 – J. Glover calls ***-***-**** (Male – likely Adrian Walker per Accurint) from his dormitory:
J. Glover: "Where you at?" A. Walker: "You know the spot, "E"."
J. Glover: "I just watched the news nigga… They tryin act like they had a search warrant for Bre's house too."
A. Walker: "I know… The only thing I can figure out is they check that license plate. They been putting an investigation on a motherfucker."
J. Glover: They checked Bre's license plate?"
A. Walker: "That's the only thing I can think of… A motherfucker pull up on the block in the charger, that's the only thing I can think of."
J. Glover: "Who at no haters running their mouth?…That nigga (Kenneth Walker) didn't have no business doing that shit. That nigga got Bre killed nigga."
A. Walker: "You got to see like the bigger picture to it though you feel me, it's more to it than what you feelin like right now."
J. Glover: "I know, I know she was feelin me. At the end of the day everything stolen from me though, I swear I know that."
J. Glover: "…That man tell me, I watched you leave your baby momma's house. Alright if you watched me leave my baby momma's house, why would you execute a warrant at Bre's house… Bre got that charger and all this shit… Bre's paper trail makes sense for everything she got though."
J. Glover: "…I don't understand how they serve a warrant for Bre's house when nothing

> ties me to Bre house at all except these bonds."
> A. Walker: "Bonds and cars and 2016… It's just ties though… Look at the ties since 2016, ever since Rambo (homicide victim)… and the camera right there, they see a motherfucker pull up."
> J. Glover: "Yeah she (Breonna Taylor) was out there the top of the week before I went to court."
> A. Walker: "They didn't even have to see her pull up, all they had to do is see that license plate… They done put two and two together… Then on top of that they go over there and find money."
> J. Glover: "No, Bre don't, Bre don't, Bre don't…Bro you know how Bre do… They didn't find nothing in her house."
> A. Walker: "I thought you said they found some money over there?"
> J. Glover: "It was there, it was there, it was there…They didn't do nothing though that's the problem… Kenneth said ain't none of that go on."
> A. Walker: "So they didn't take none of the money?"
> J. Glover: "Kenneth said that none of that go on. He said Homicide came straight on the scene and they went to packaging Bre and they left."

Mr. A. Walker and Mr. Glover were released pending trial. Mr. Glover has reportedly absconded.

Go through the report. If genuine – and it certainly seems to be – it depicts Ms. Taylor as a knowing participant of Mr. Glover's drug-trafficking enterprise. There is really no gentle way to put it.

As a Fed your blogger obtained and participated in serving many search warrants. In his opinion, the March 2020 search warrant of Ms. Taylor's residence seems well supported by probable cause. Yet neither this writer, nor anyone he knows, was ever shot at while on the job, let alone had a partner wounded. How would we have reacted under such circumstances? Would we have instantly realized that the shooter "didn't really mean it?" Could we have safely "de-escalated"? And if not, would we have accurately placed return fire?

Set warrants aside. Consider a far more common cause of innocent deaths: police pursuits. Instead of getting into specifics, California law requires that agencies establish detailed policies about *when* and *how* to chase and train their officers accordingly. (Click here for LAPD's policy.) Yet pursuits still continue to end poorly.

Really, when it comes to the more fraught aspects of policing such as pursuits or search warrants the usual preventives – rules, training, supervision – can't always be counted on to prevent horrific outcomes. Yes, there are other ways. Police occasionally abandon chases. As for search warrants, officers sometimes elect to watch, wait and intercept occupants as they leave. Naturally, doing that is resource-intensive, and should surveillance be detected it could lead to the destruction of evidence. Detaining persons also carries risk.

About 17 percent of Louisville's residents live in poverty. In Ms. Taylor's ZIP code, 40214, the proportion is about twenty percent. In 40211, where the "trap houses" were located, it's about *thirty-four percent*. Jamarcus Glover and Adrian Walker were taking advantage of a deeply troubled neighborhood for their selfish ends. Sadly, Breonna Taylor had apparently lent a hand.

Search warrants aren't the first proactive strategy to come under challenge. Most recently, "Should Police Treat the Whole Patient?" discussed the back-and-forth over stop-and-frisk and other geographically targeted enforcement campaigns, whose intrusiveness and tendency to generate "false positives" has badly disrupted police-minority community relations across the U.S.

Search warrants, though, are supposedly different. They're based on articulated evidence of criminal wrongdoing and must be approved by a judge before execution. As your blogger discovered while a Fed, they're the stock-in-trade of serious criminal investigations. Without this tool officers would be hard-pressed to combat major sources of drugs or guns. They'll undoubtedly play a key role in "Operation Legend," that new Federal-local partnership we've heard so much about. Of course, it's also essential that police avoid endangering the lives of innocent citizens. Perhaps it's time to revisit some of our more cautionary essays; say, "First Do No Harm" and "A Delicate Balance."

Yet in our ideologically charged, perhaps irreparably fractured climate, turning to the usual remedies (i.e., training, tactics, supervision) may not do. Breonna Taylor's characterization as an innocent victim of police overreach has added a bucketful of fuel to the fire. We're talking "defund" on steroids. So by all means let's quit pretending. Level with the inhabitants of our poorer, crime-stricken places about the risks of even the best-intentioned proactive policing. Give them an opportunity to opt out of, say, drug investigations and such. Of course, be sure to inform them of the likely consequences. Considering what our nation is going through, it seems to be the least we can do.