

GEORGE FLOYD ESSAYS

by

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FULL STOP AHEAD

Floyd and the virus upend policing. Some cops react poorly.



For Police Issues by Julius (Jay) Wachtel. Rebelling against shots was once consigned to society’s fringes. No longer. Two months ago, as municipalities across the U.S. struggled with their vaccination *refuseniks* Southern California’s progressives stepped to the plate. On July 27th. [Mayor Eric Garcetti and City Council President Nury Martinez announced](#) that Los Angeles city employees would be required to “either submit proof of [COVID-19] vaccination or a weekly negative test.” [An ordinance to that effect](#) was enacted in August. Approved on a 13-0 council vote, it requires that city employees be fully vaccinated by October 19 “unless approved for an exemption...as a reasonable accommodation for a medical condition or restriction or sincerely held religious beliefs.” Exempted employees, however, will be required to submit to weekly testing.

San Diego soon followed [with a similar law](#). Its deadline for employees to get vaccinated or exempt is November 2.

Well, that’s as it should be. Vaccination has long been an integral part of a “[social contract](#)” which calls on citizens to give up certain freedoms in exchange for the benefits they accrue from society and the state. So job done, right? Not exactly. You see, it seems that in both Los Angeles and San Diego an aversion to (literally) roll up one’s sleeves “[infected](#)” [a goodly number of emergency responders](#). As of the first week of September, 53 percent of Los Angeles’ police officers and 41 percent of its firefighters [reportedly lacked their full complement of shots](#). And many remain ill-disposed to get poked. [Insider data](#) obtained by KNX-1070 radio reveals that over 3,000 LAPD employees – about one out of every four in a force of 9,000 officers and 3,000 civilians – intend to seek exemptions.

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LAPD empl	Fully vaccd	Partly vaccd	Not vaccd	Unk	Wants relig exempt	Wants medical exempt
12315	6377	164	1918	3856	2651	368

What's more, some aren't just asking. With assistance from [a legal nonprofit](#) that peddles the notion that vaccination mandates "are unreasonable and impede on the religious rights of individuals," [six LAPD employees](#) filed a [Federal lawsuit](#) that seeks to block the ordinance. Calling it an "overbroad and unwarranted intrusion into the confidential medical conditions of Plaintiffs and thousands of employees," they argue it violates "fundamental Constitutional rights to bodily integrity, including, especially, to be free from unconsented to or coerced medical treatment."

Coercion seems the key concern. According to the plaintiffs, the vaccines' emergency-use approval affords individuals the choice "to accept or refuse administration." But the ordinance makes full vaccination "a condition of employment." So police employees really have no choice. To keep their jobs they must either submit to poking or, should they gain an exemption, endure "onerous" and "intrusive" weekly testing. Several plaintiffs revealed that they've had COVID, thus acquired a natural immunity that's supposedly better than what vaccination offers. Yet the ordinance ignores this advantage. It's also alleged that the city failed to outline a detailed process and allot "a reasonable time" to prepare and submit requests for exemption.

Ditto San Diego. [In an online rant](#), a cop urged his colleagues to "stand up for our God given freedoms" and reject the mandate. Nearly half of San Diego's 2,000 police officers [remain unvaccinated](#). Ninety percent who responded to a union survey oppose mandatory shots, and sixty-five percent indicated they would consider resigning if vaccination was required.

L.A.'s powerful officer union, the Los Angeles Police Protective League, seems to support officer vaccination. However, it worries that enforcing the ordinance would lead to even more cops leaving and could have a "debilitating and catastrophic impact" on public safety. Instead of shots, [it suggests that weekly testing](#) would create "an appropriate balance" between personal rights and public health. Same-o, same-o in San Diego, whose police union has drawn a "line in the sand against mandatory vaccinations." But its president, Jack Schaeffer, says that the alternative of weekly testing is fine. So far both cities seem to be sticking with their deadlines. So we'll see.

To avoid such battles other communities [have considered fully exempting](#) the police. After [warnings from the police union](#) that a mandate would "exacerbate an already

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dangerous staffing crisis,” [Portland moved to exempt](#) officers from a regulation requiring that city workers get poked. Cincinnati, which is supposedly “struggling to retain and attract enough police officers,” [is leaning towards the substitute](#) of weekly testing. Struggles between cities and their cops are also underway in San Jose, New York City and Chicago, whose police union leader [likened mandatory vaccination to the Holocaust](#). (He apologized.)

Yet doesn't the “social contract” cut both ways? Officers chronically complain about citizen non-compliance. So shouldn't the badge-carriers set the example? Problem is, vaccination mandates are coming at a time of severe disruption to the police workplace. [George Floyd's killing](#) brought on a flurry of rulemaking that sought to limit officer discretion and insure that cops got penalized for the blunders they *did* make. Consider, for example, the “[George Floyd Justice in Policing Act](#)”. Although it never made it out of the Senate, the proposed Federal law would have abolished the defense of qualified immunity, which protects officers from private lawsuits. It would have also required that jurisdictions receiving Federal law enforcement funds adopt Federal use-of-force standards and participate in a national police misconduct registry.

Meanwhile, [California State Senate Bill 2](#) sits on Governor Gavin Newsom's desk. If he signs it, State authorities could investigate alleged police wrongdoing anywhere in the Golden State and, should they find misconduct, revoke officers' peace officer status – meaning, put them out of a job – no prosecution necessary. According to the measure's author, a Los Angeles-area State Senator, “we've seen 150 years of police policing themselves and it doesn't work.” There have even been moves to do away with police departments altogether. Minneapolis voters will have a chance this November [to “replace” their police force](#) “with a Department of Public Safety which could include licensed peace officers (police officers) *if necessary...*” (emphasis ours).

“Replacing” cops, though, seems an incomplete remedy. What the Minneapolis initiative wouldn't “replace” is criminals. If it takes effect – and we doubt it will – and if crime keeps taking place – and we're sure it will – *someone* will still have to interact with suspects and witnesses, gather evidence and make arrests. They'll quickly discover what their badge-carrying forerunners well knew: policing doesn't come close to providing the clarity that practitioners of more peaceable occupations take for granted. Is that citizen reaching for a cell phone or a gun? Would being “nice” gain compliance or encourage flight? Essays in our “[Compliance and Force](#)” section frequently refer to the reluctance by some members of the public to voluntarily comply with officer orders and requests. Check out “[Dancing With Hooligans](#).” It's somewhat colorfully subtitled “For street cops every day's a reality show. And that reality is often unpleasant.”

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No, officers don't always behave wisely. As we've often pointed out (e.g., "[Speed Kills](#)") rushed, "split-second" decisions can easily precipitate tragic endings. Cop personalities also vary. Some officers are chronically impulsive; others seem unwilling to accept even a smidgen of risk. Still, deciding whom to stop or chase, when to use force, and, most importantly, how much and of what kind, requires that cops exercise considerable autonomy. Yet the trend is clearly to tighten that leash. Consider Chicago's [mammoth new foot-chase policy](#). Characterized as a "no-foot-chase policy" by the leader of the police union, the new rule was adopted without significant officer input. Coming in at (our count) 5,777 words, [three times the length of its predecessor](#), it forbids foot chases when, among other things, "the established reasonable articulable suspicion or probable cause is solely for a criminal offense less than a Class A misdemeanor (a sentence of less than one year of imprisonment) and the person...poses no obvious threat to the community or any person [or] has no obvious medical or mental health issues that pose a risk to their own safety."

Got it? Now implement that on the street!



Something else accompanied the pandemic and the killing of George Floyd. As rulemaking soared, [so did homicide](#). Milwaukee had [190 murders in 2020](#). That's supposedly "the most ever recorded" and nearly twice its previous year's toll. Notoriously violence-fraught Chicago [endured half-again as many murders in 2020](#) as in 2019 (there's been an appalling 558 so far in 2021.)

[Los Angeles](#) and [New York City](#) endured steep 2019-2020 increases as well (47 percent and 38 percent respectively). And our nation's [violence-troubled capital](#) experienced a lesser but still considerable jump of 19 percent.

Why did murder sharply increase? Some attribute it to an exit of cops. "[Elevated police turnover following the summer of George Floyd protests](#)," a recent article in *Criminology & Public Policy*, confirmed that an exit did occur. We were able to readily gather the number of sworn officers pre- and post-pandemic for Milwaukee, New York City and Los Angeles. [Data for 2019 came from the UCR](#). Since its 2020 release is not yet in, we used city-linked websites for more recent numbers. (Click [here](#) for Milwaukee's 2020 numbers, [here](#) for New York City's 2021 numbers, and [here](#) for L.A.'s 2021 numbers.) Sworn employee staffing modestly declined in each city; all were in the

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five-percent range. Milwaukee reported 1832 sworn officers in 2019 and 1738 in 2020 (-5.1%). New York City went from 36,563 in 2019 to 34,770 as of September 2021 (-4.9%). Los Angeles, which had 10,002 officers in 2019, reported 9,432 as of August 2021 (-5.7%).

Cause and effect, right?

Well, not so fast. While the “elevated turnover” article *did* mention that “fewer officers per capita have been linked to higher crime rates,” it didn’t probe further. And to complicate things, another article in the same issue, “[Crime, quarantine, and the U.S. coronavirus pandemic](#)” reported that property crimes, drug crimes, robberies and aggravated assaults went *down*. At some point, a reduction in sworn staff would likely lead to more crime, of whatever kind. But whether a relatively small decline (five percent) would precipitate a spike in murder seems questionable. After all, the ninety-five percent of cops who remain are still doing their jobs, right?

Well, not so fast. To be sure, intensively patrolling afflicted areas to discourage gunslinging and other loutish behavior had become a popular police practice. “[Geographically focused](#)” and “[hot spots](#)” have been deemed successful at preventing crime by both NIJ and independent scholars (“[Hot spots policing and crime reduction](#)”, *Journal of Experimental Criminology*, 2019). Unfortunately, when these approaches are implemented, productivity pressures and the uncertainties of the street can create an abundance of “false positives” – meaning that lots of citizens get needlessly hassled (“[Turning Cops Into Liars](#)” and “[Driven to Fail](#)”). High-crime areas are often predominantly populated by citizens of color, so they bear the brunt of these errors (“[Scapegoat I](#)” and “[Scapegoat II](#)”). Bottom line: by the end of the last decade, blowback over alleged racial profiling led police departments – New York, Chicago and Los Angeles, to mention three – to throttle back. That easing became even more pronounced after George Floyd.

Something else might also be at work. In a recent assessment, the typically “progressive” *New York Times* blamed an increase in the Big Apple’s gun violence [on a purposeful slowdown by disaffected cops](#). If so, it wouldn’t be the first time that officers have held back. Intense criticism and heightened oversight brought on by controversial shootings propelled “police slowdowns” in Baltimore, Chicago and Minneapolis during the mid-2010’s (see “[Police Slowdowns](#)”). Now consider all the negative, anti-police sentiment that followed the killing of George Floyd. All those new, complex rules. Really, one would expect cops to become at least somewhat disenchanted. Who wouldn’t?

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And let's look beyond police behavior. "[Has COVID-19 Changed Crime? Crime Rates in the United States during the Pandemic](#)," a recent article in the *American Journal of Criminal Justice*, suggests that increased stress and reduced personal mobility brought on by the virus created a "rampant opportunity for intimate partner violence, serious batteries, and homicides." So throw that in as well. Somewhat fewer, decidedly less-enthusiastic cops applying less-than-optimal strategies at a time when citizens are going bonkers. Are we closer to explaining the severity of the murder spike?

Well, back to the future! [LAPD recently brought back that "bad old" hot spots approach](#) for another go-round. Ditto, [Chicago](#) and [New York City](#). And we're happy that a proven approach is getting a second look. Applying effective strategies while assuring that targets are selected with great care is a perfect mission for those highly autonomous public servants we call "cops." As to that, we cut them no slack. While the "exchange agreement" entitles them to certain benefits – like a good salary – it doesn't give them the right to "slow down" or otherwise slough off. Police officers have awesome responsibilities. They must strive to do their best no matter how often managers and public officials change their ever-loving minds. In the end, if a cop can't do their daily best on the street, it really is best that they resign.

Posted 5/17/21

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.

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- 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

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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

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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

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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 precious 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

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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.

Posted 6/3/20

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,

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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](#)

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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.



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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

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“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

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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

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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

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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.

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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 6/30/23; edited 7/1/23

WATCHING THE WATCHERS

Will sanctioning its cops bring Minneapolis back?



For Police Issues by Julius (Jay) Wachtel. Not long before their Third District colleagues tangled with George Floyd, a couple of officers from Minneapolis PD’s Fourth District [festooned the Christmas tree that graced their precinct's lobby](#) with some unusual ornaments: “a pack of menthol cigarettes, a can of Steel Reserve malt liquor, police tape, a bag of Takis snacks and a cup from Popeyes Louisiana Kitchen.” [Described as “super racist stuff”](#) by Mayor Jacob Frey, these unusual decorations upset more than a few citizens. And ultimately led to the suspension of one of the cops, the retirement of his partner, and the demotion of two of their bosses.

As one might expect, the incident was juicy fodder for the media. But it didn’t hold a candle to the tragedy that came five months later. And one year after *that*, on the day following the conviction of ex-MPD cop Derek Chauvin for murdering Mr. Floyd, the Department of Justice launched a “patterns or practices” investigation of Minneapolis P.D. [Its recently released report](#) paints a grim picture of how MPD officers treated citizens, and particularly members of racial and ethnic minorities. [According to Attorney General Merrick Garland](#), MPD officers “routinely disregard the safety of people in their custody” and “fail to intervene to prevent unreasonable use of force by other officers.” They reportedly mistreat persons suffering from behavioral disorders, violate free-speech rights, and discriminate against Black and Native American persons. (And yes, those Christmas ornaments get prominent mention. See pg. 46.) Here’s an extract from the report’s opening page:



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For years, MPD used dangerous techniques and weapons against people who committed at most a petty offense and sometimes no offense at all. MPD used force to punish people who made officers angry or criticized the police. MPD patrolled neighborhoods differently based on their racial composition and discriminated based on race when searching, handcuffing, or using force against people during stops.

George Floyd was murdered on May 25, 2020. Our initial account, "[Punishment Isn't a Cop's Job](#)," was posted on June 3rd. Three weeks later we followed up with an [in-depth assessment](#) of poverty and crime in Minneapolis. Focused on the year preceding the tragic encounter, our analysis revealed a profound relationship between income, race and violence. A comparo between four neighborhoods at each end of the violent crime continuum reflected what we've found elsewhere: as prosperity increases, so does the proportion of White residents. Meanwhile violence goes down.

Of course, the link between poverty and violence is well known. Our [neighborhoods essays](#) frequently roll out data illustrating that relationship throughout urban America. And cops must deal with the consequences every day. Minneapolis' economic disparities were no secret to the authors of DOJ's report (pp. 3-4):

The metropolitan area that includes Minneapolis and neighboring St. Paul known as the Twin Cities has some of the nation's starkest racial disparities on economic measures, including income, homeownership, poverty, unemployment, and educational attainment... The median Black family in the Twin Cities earns just 44% as much as the median white family, and the poverty rate among Black households is nearly five times higher than the rate among white households...

According to DOJ, Black and Native Americans aren't simply poorer. They're also far more likely to be stopped by police. A graph shows that MPD makes proportionally fewer traffic enforcement stops as the proportion of White residents increases (pg. 34). Neighborhoods "with fewer white people" are reportedly beset by pretextual stops that MPD uses to find guns and combat violence. Searches of Black persons are disproportionately frequent. Race and ethnicity aside, the role of place doesn't come up until page 40, when it's reported that officers in two of the city's five police precincts use far more force against Blacks and Native Americans than against Whites during stops:

Compared to white people behaving similarly, Black people stopped by MPD are subjected to:

- 22% more searches
- 37% more vehicle searches
- 24% more uses of force

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For example, from May 25, 2020, to August 9, 2022, in the Third Precinct where many Native Americans live and where supervisors told us the cowboys want to work MPD used force 49% more often during stops involving Black people and 69% more often during stops involving Native American people than they did during similar stops involving white people. And during that same period, officers in the predominantly white Fifth Precinct used force against Black people 44% more often than against white people during similar stops.

Still, other than noting that “MPD has often used a strategy known as ‘pretext’ stops to address crime,” (p. 34), the report was mum about what that “crime” actually looks like. Offending and its distribution across the city get no mention. In a report that ostensibly seeks to assess why Minneapolis’ cops act as they do, the quantity and nature of the criminal incidents to which they respond would seem pertinent. But they’re ignored.

A thorough reckoning of the environment in which Minneapolis cops labor was clearly not part of DOJ’s game plan. But it’s what we set out to do. Minneapolis’ five police precincts (“Districts”) service eighty-seven neighborhoods. Leaving aside the University of Minnesota and three industrial areas, we collected data on eighty-three. Demographics are from the city’s official [“demographics dashboard”](#). Crime data is from the [“crime dashboard.”](#) We downloaded data on all crimes between January 1, 2019 and June 15, 2023 that were coded as murder/non-negligent manslaughter, aggravated assault, robbery, and kidnapping. Our process produced unofficial violence rates per 10,000 population. This table summarizes the findings:

Precincts					Neighborhoods		
Precinct no.	Pop	Pct. poverty	Pct. non-White	Viol/10K 2022 rate	# per precinct	Poverty range	Viol rate 2022 range
1	43304	26	42	774	6	9-50	106.5-413.1
2	70014	26	30	418	17	4-47	8.7-240.1
3	126743	15	42	1395	26	1-38	0-356.3
4	71106	24	70	1439	14	3-33	27.6-466.5
5	106584	10	26	854	20	2-25	2.7-269

Minneapolis’ five precincts exhibit dramatic differences in economics and violent crime. The First, Second and Fourth have overall poverty rates that are more than twice those of the privileged Fifth. Yet the Fifth nonetheless sports a substantial violence rate. Looking within, it turns out that three of its neighborhoods (Lyndale, Steven’s Square and Whittier) are burdened with poverty scores in the twenties. These and other within-precinct differences led us to set them aside and focus on neighborhoods.

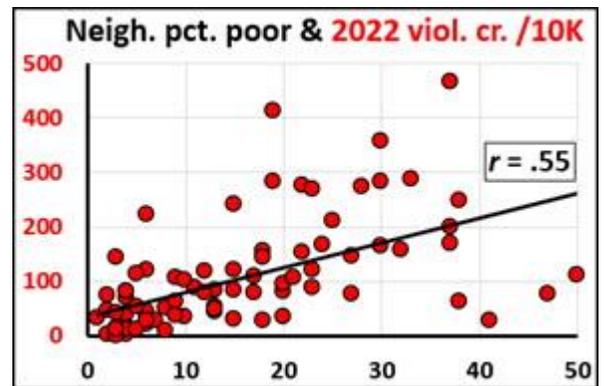
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Our present inquiry covers the period between 2019 and June, 2023. We begin with yearly comparisons of five neighborhoods at each end of the violence spectrum. (For 2023 that's a part-year rate). Lowest-violence neighborhoods are depicted in the top table, and highest-violence neighborhoods are in the bottom table. Each is coded for violence rate and percent of residents in poverty. Their differences - and its consistency - is truly astounding. Violence and poverty are literally locked in an embrace. (According to the [2021 ACS](#), Minneapolis' citywide poverty rate was 15%).

MPLS. NEIGHS WITH 5 LOWEST VIOL CR RATES/10K – PCT. IN POVERTY														
2019	Rate	Pov	2020	Rate	Pov	2021	Rate	Pov	2022	Rate	Pov	Part 2023	Rate	Pov
Page	5	3	Kenny	5	2	Kenny	5	2	Page	0	3	Beltrami	0	13
Hale	6	4	Lynnhurst	6	3	Lynnhurst	6	3	Kenny	3	2	Page	0	3
Lynnhurst	6	3	Fulton	10	4	Fulton	9	4	Fulton	3	4	Lynnhurst	2	3
Fulton	7	4	Armatage	11	4	Hale	12	4	Lynnhurst	3	3	Kenny	3	2
Field	8	6	St. Anth E	13	13	Linden Hil	14	3	Diamd Lk	6	4	Ericsson	3	4
Average	7	4		9	5		9	3		3	3		1	5

MPLS. NEIGHS WITH 5 HIGHEST VIOL CR RATES/10K – PCT. IN POVERTY														
2019	Rate	Pov	2020	Rate	Pov	2021	Rate	Pov	2022	Rate	Pov	Part 2023	Rate	Pov
McKinley	258	22	Downtn W	317	19	McKinley	336	22	Folwell	282	19	Downtn W	115	19
Folwell	270	19	E Phillips	344	30	Jordan	341	30	Near North	287	33	Stv Square	123	23
E Phillips	278	30	McKinley	350	22	Downtn W	403	19	E Phillips	356	30	Midtn Phill	136	28
Downtn W	467	19	Jordan	351	30	E Phillips	418	30	Downtn W	413	19	E Phillips	171	30
Hawthorn	476	37	Hawthorn	591	37	Hawthorn	518	37	Hawthorn	467	37	Hawthorn	175	37
Average	350	25		391	28		403	28		361	28		144	27

This scattergram depicts the relationship between percent in poverty (horiz. axis) and 2022 violent crime rate (vert. axis) for the 83 neighborhoods under study (each is represented with a red dot). The “r” statistic ranges from zero, meaning no relationship, to one, which means that the variables (percent poor and the violent crime rate) are in perfect sync. While there are outliers, that *r* of .55 reflects a pronounced tendency for poverty and violence to go up and down together.

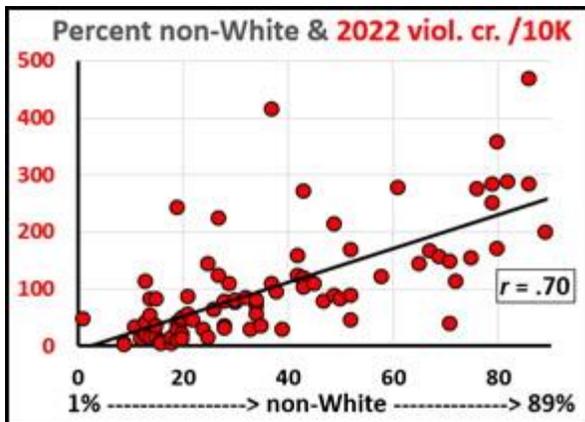


DOJ's report complains that MPD officers unjustly pick on non-Whites. But could other factors be contributing? Say, higher rates of violence in lower-income neighborhoods? Below are repeat comparos between low and high-violence neighborhoods, but with percentage of non-White residents instead of poverty rates.

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MPLS. NEIGHS WITH 5 LOWEST VIOL CR RATES/10K – PCT. NON-WHITE (NW)														
2019	Rate	NW	2020	Rate	NW	2021	Rate	NW	2022	Rate	NW	Part 2023	Rate	NW
Page	5	9	Kenny	5	18	Kenny	5	18	Page	0	9	Beltrami	0	52
Hale	6	14	Lynnhurst	6	16	Lynnhurst	6	16	Kenny	3	18	Page	0	9
Lynnhurst	6	16	Fulton	10	9	Fulton	9	9	Fulton	3	9	Lynnhurst	2	16
Fulton	7	9	Armatage	11	15	Hale	12	14	Lynnhurst	3	16	Kenny	3	18
Field	8	22	St. Anth E	13	34	Linden Hil	14	18	Diamd Lk	6	16	Ericsson	3	13
Average	7	14		9	18		9	15		3	14		1	22

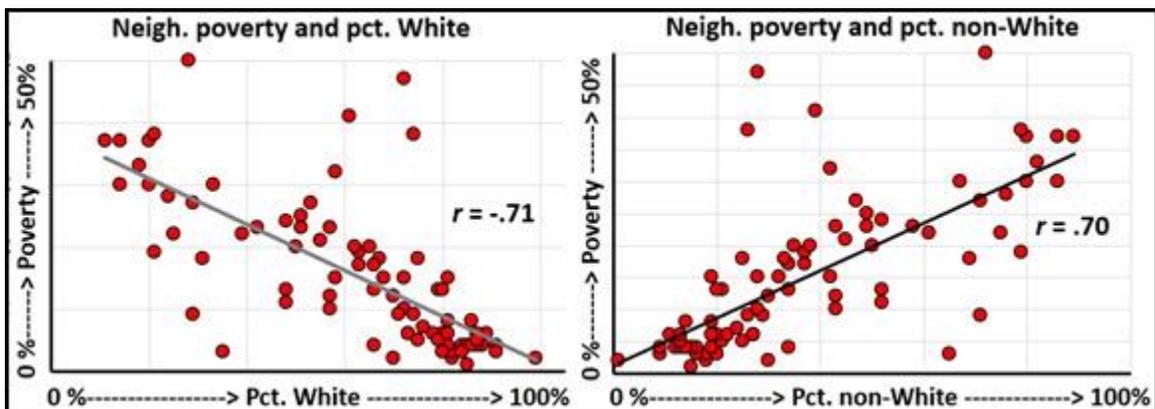
MPLS. NEIGHS WITH 5 HIGHEST VIOL CR RATES/10K – PCT. NON-WHITE (NW)														
2019	Rate	NW	2020	Rate	NW	2021	Rate	NW	2022	Rate	NW	Part 2023	Rate	NW
McKinley	258	61	Downtn W	317	37	McKinley	336	61	Folwell	282	79	Downtn W	115	37
Folwell	270	79	E Phillips	344	80	Jordan	341	86	Near North	287	82	Stv Square	123	43
E Phillips	278	80	McKinley	350	61	Downtn W	403	37	E Phillips	356	80	Midtn Phill	136	76
Downtn W	467	37	Jordan	351	86	E Phillips	418	80	Downtn W	413	37	E Phillips	171	80
Hawthorn	476	86	Hawthorn	591	86	Hawthorn	518	86	Hawthorn	467	86	Hawthorn	175	86
Average	350	69		391	70		403	70		361	73		144	64



Again, there are exceptions. Note, for example, Beltrami’s zero violence score in 2023. But violent crime rates clearly trend high where non-Whites abound. Check out the scattergram. At $r = .70$ the relationship between violence and percent non-White is undeniably pronounced.

We don’t argue that some Minneapolis officers shouldn’t be wearing a badge. There’s a reason why our original post about

George Floyd, which came out one week after the incident, was entitled “[Punishment Isn’t a Cop’s Job.](#)” Yet considering poverty’s relationship with violence, ignoring its role does no one any favors. And in Minneapolis, the economic circumstances of many non-Whites are indeed bleak:



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Not-so-incidentally, that intimate connection between poverty and violence, which the Feds ignored, is no secret to Minneapolis' residents. We regularly update "[Don't Divest – Invest!](#)", our follow-on essay about George Floyd, with relevant news clips about the troubled city. Here's a sampling (most recent first):

- **5/5/23** Violence-ridden Minneapolis [is beset by three street gangs](#): the "Lows," the "Highs", and the "Bloods". On May 3 DOJ unsealed indictments charging thirty members of the "Highs" and the "Bloods" with a RICO conspiracy to commit murder and robbery and to traffic in drugs. Fifteen additional members are charged with Federal gun and drug violations. A like indictment naming the "Lows" is anticipated
- **12/22/22** Residents of a subsidized apartment complex in Minneapolis' working-class Cedar-Riverside neighborhood [blame an "explosion of Fentanyl"](#) and a profusion of homeless encampments for break-ins and shootings that have made life unpleasant and all-too-often, treacherous. Despite hiring a security guard and adding more cameras, "I'm just not sure we're making up any ground," says a property manager. "Every night there's something new."
- **8/27/22** Black people account for about 19 percent of Minneapolis residents. [Yet 83 percent of shooting victims so far this year](#) have been Black, as have 89 percent of known shooters. "That makes sense," said City Council member LaTrisha Vetaw, who is Black, as the shootings are taking place in "underserved communities" predominantly inhabited by Black persons.
- **8/5/22** Minneapolis' "Downtown West," a busy district with concert venues and official buildings, enjoyed a reprieve from crime as activity decreased during the pandemic. But as things get back to "normal," [crime and violence have returned](#) with a vengeance. So far this year violent crime is 25 percent higher than in 2021, gunfire is up 40 percent, and property crimes have soared 65 percent. Police staffing, though, is way down; the downtown precinct has 49 only cops on patrol versus 81 in 2020.

Full stop. As that May 5, 2023 update suggests, not everyone in DOJ has focused their angst on the cops. Check out its [recent announcement](#) about the Federal indictment of dozens of Minneapolis gang members who wreaked havoc in the city's impoverished neighborhoods: "The most vulnerable in our communities are often those most impacted by gun violence and criminal gang activity. Our most vulnerable residents are entitled to the same protections and safety as everyone else in society."

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Still, whether it's police or the Feds, law enforcement is inevitably after-the-fact. Even when well done it's often too little, too late. What's really necessary is what we've called on for the last decade-and-a-half. Here's our favorite outtake from "[Fix Those Neighborhoods!](#)":

Yet no matter how well it's done, policing is clearly not the ultimate solution. Preventing violence is a task for society. As we've repeatedly pitched, a concerted effort to provide poverty-stricken individuals and families with child care, tutoring, educational opportunities, language skills, job training, summer jobs, apprenticeships, health services and – yes – adequate housing could yield vast benefits.

That's an issue that cuts across national boundaries. Consider the current turmoil in France, which is beset by riots and looting that were sparked by the [July 27 police shooting death](#) of a 17-year old who tried to drive off after a traffic stop. His killing, in a poverty-stricken area of the Paris suburb of Nanterre, was "the lighter that ignited the gas. Hopeless young people were waiting for it. We lack housing and jobs, and when we have (jobs), our wages are too low." Those were the words of a resident of nearby Clichy, where [a notorious 2005 police encounter](#) led to the deaths of two poor youths and set off weeks of rioting. A decade-plus later, France would break out in riots sparked by the murder of George Floyd. [According to the New York Times](#), "France is fractured between its affluent metropolitan elites...and low-income communities in blighted, racially mixed suburbs where schools tend to be poor and prospects dim." French police killed 13 motorists in 2022 and three including the youth this year; the officer who shot him was promptly arrested and charged with homicide.

To be sure, cops differ. "[Third, Fourth and Fifth Chances](#)" emphasized that troubled officers require prompt attention. (Derek Chauvin isn't the first MPD officer whose dodgy conduct was overlooked until it was too late. Check out "[A Risky and Informed Decision](#)", our 2021 piece about ex-cop Mohamed Noor.) So by all means, don't abandon sincere efforts at police reform. But keep in mind that they're no substitute for the funding and hard work that are urgently needed to restore sanity to low-income neighborhoods.

And we don't just mean in Minneapolis.

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

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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

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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

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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!

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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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- 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](#).

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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

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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

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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.”

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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-

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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 witness'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](#).)

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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 Arradondo 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

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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 involved in the martial arts. Lieutenant Mercil emphasized that officers

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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

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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

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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

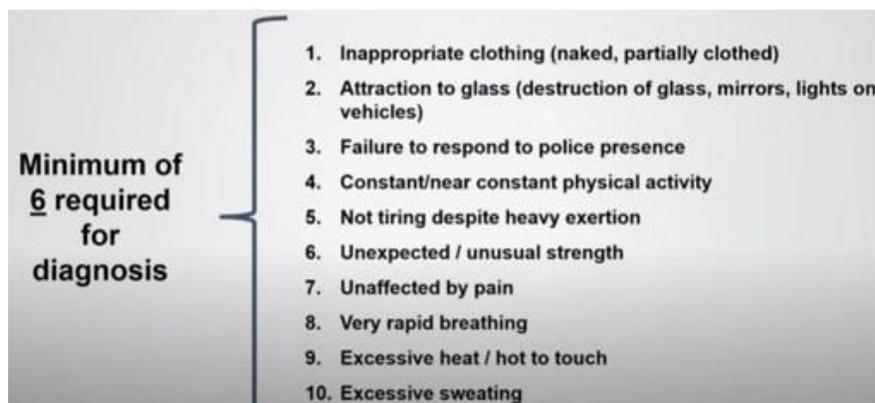
stopped breathing at 8:25:16, and that twenty-five seconds later "there was not an ounce of oxygen left in his body." But Chauvin's knee remained on Mr. Floyd's neck for another three minutes.

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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 beat 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

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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 witness’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.

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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 shoed 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 inservice 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 inservice 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

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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’t 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 CO₂ 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 Chauvin's 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

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.

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 asphyxia. 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.

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 CO₂ 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 CO₂ 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.

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.

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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 "sudden cardiac arrhythmia" 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

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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.”

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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.

EX-COPS ON TRIAL

Chauvin's colleagues face Federal civil rights charges



DAY BY DAY:

[Week 1 \(1/24-1/28\): Opening Arguments](#) [Day 1](#) [Day 2](#) [Day 3](#) [Day 4](#) [Day 5](#) [Wrap](#)

[Week 2 \(1/31-2/1\): Day 6](#) [Day 7](#) [Wrap](#)

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[Week 4 \(2/14-2/17\): Day 13](#) Defense case begins [Day 14](#) [Day 15](#) [Day 16](#) [Wrap](#)

[Week 5 \(2/21-2/25\): Day 17](#) [Day 18 \(Closing arg.\)](#) [Jury Instr.](#) [Verdict](#) [Sentence](#)

INTRODUCTION

For Police Issues by Julius (Jay) Wachtel. On May 7, 2021 [a Federal Grand Jury indicted](#) the four former Minneapolis police officers who arrested George Floyd for violating [18 USC 242](#), which forbids *willfully* (“[intentionally, deliberately or designedly, as distinguished from an act or omission done accidentally, inadvertently, or innocently](#)”) violating a person’s Constitutional rights while acting “under color of law.” Count One pertains to Derek Chauvin, the senior officer on scene. Count Two accuses J. Alexander Kueng, a rookie, and Tou Thao, an experienced officer with ten years on the

job, of failing to stop Chauvin's use of excessive force. Count Three, which brings in Thomas Lane, a rookie, accuses him and his colleagues of failing to render aid to Mr. Floyd, thus demonstrating a "deliberate indifference to his serious medical needs". (Click [here](#) for the indictment.)

Chauvin won't be going to trial. In December [he pled guilty](#) to the Federal civil rights charges, admitting that he had used "unreasonable and excessive force" and did so in a "callous and wanton" manner with disregard for the likely consequences. He also pled guilty to a separate indictment that charged him with violating the rights of a 14-year old boy on Sept. 4, 2017 by using excessive force.

[A Federal jury that will try Lane, Kueng and Thao was selected and seated in a single day](#), January 19. According to reporters, eleven of the twelve regular jurors are White, and one is Asian. Five of the alternates are also White, and one is Asian. One potential Black juror was excused because he insisted he could not be fair. All three officers also face State charges for aiding and abetting Floyd's murder. Their trial on that case is set to begin June 13.

WEEK 1

DAY 1 (1/24/22)

[Opening Arguments](#)

Prosecution

"In your custody is in your care." That's not just a moral responsibility, it's required by law. But instead of intervening and providing medical aid - officers will testify that both are mandatory - the accused "watched" as Mr. Floyd, his breath "crushed" by Chauvin, "suffered a slow, agonizing death." It's not that the officers didn't realize it; Floyd begged for help and said "I can't breathe" twenty-five times.

Referring to Tou Thao, the prosecutor mentioned he was right next to Chauvin but did nothing. And when a bystander complained that Floyd was passing out, Thao said "that's what happens when you're lying on the ground."

Referring to J. Alexander Kueng, the prosecutor said he ignored Floyd's "a knee on my neck, I'm through." Kueng did nothing as Chauvin kept pressing down on Mr. Floyd,

and even after Kueng couldn't detect a pulse. Kueng was also accused of joining with Chauvin in rejecting officer Lane's suggestion to roll Floyd onto his side.

Referring to Thomas Lane, the prosecutor said he did nothing when the other officers rejected his suggestion to place Floyd on his side.

Defense

Lawyer for Tou Thao (Robert Paule)

His lawyer brought up Floyd's failure to comply with Lane and obvious drug intoxication. He also mentioned that Lane and Kueng were rookies, but Thao was an experienced officer. And when Thao and Chauvin arrived, the rookies were struggling with Mr. Floyd. And the struggle continued. Thao then had to deal with "vociferous" bystanders. He pointed out that his client's behavior has to be proven "willful" (meaning purposefully deprived Floyd of his rights; not through accident or misunderstanding.) He also cautioned that "use of force is often disturbing to watch and difficult to comprehend." And while he agreed that Floyd's death was tragic, he reminded jurors that didn't mean that his client committed a crime.

Lawyer for J. Alexander Kueng (Tom Plunkett)

Kueng's lawyer emphasized that his client was a rookie with limited *and inadequate* training. Kueng had to assume that Chauvin, his training officer, knew best. When Kueng and another rookie, Thomas Lane were paired up as partners, each had only served five full post-training shifts. Kueng's lawyer emphasized the severity of the struggle with Mr. Floyd. And he pointed out that when Chauvin, the senior man arrived, he "becomes the shot-caller," as senior officers "know things that rookies don't." Again, Kueng's lawyer emphasized the Government's obligation to prove that Kueng acted "wilfully."

Lawyer for Thomas Lane (Earl Gray)

Lane is charged with one count: being "wilfully" and "deliberately indifferent" to Floyd's medical condition. But the lawyer insists that his client did everything "he could possibly do" to help Floyd. Lane, who was paired with another rookie, was told that Chauvin was an excellent training officer and to "follow what he does." Lane was faced with getting Mr. Floyd, a large, powerful man who was under the influence of drugs and behaving erratically, out of his car. Lane wound up in a position from which he couldn't see Chauvin's knee on Mr. Floyd's neck, and the only pressure he exerted was on Mr. Floyd's feet. Lane's lawyer mentioned that "excited delirium," a condition in which

persons exhibit “superhuman strength,” was taught at the police academy. But when Lane said that might apply to Mr. Floyd, and suggested rolling the man on his side, Chauvin refused. Lane then asked to accompany Mr. Floyd in the ambulance and performed chest compressions to revive him. His actions, emphasized his lawyer, were “not deliberately indifferent at all.” *Lane’s lawyer said his client will testify.*

[Prosecution case](#)

Kimberly Meline, FBI. Day’s only witness is FBI employee Meline, who synchronized videos that were taken by officers and bystanders during the incident. First video begins with officer Lane inside his SUV. He approaches Floyd sitting in the Mercedes, points his gun and tells Floyd to exit. For our video compilation that tracks the entire episode, click [here](#).

Video clips include Floyd struggling against being in a police car, saying “I’m not a bad guy” and “I can’t breathe.” Lane tries to reassure him, but to no avail. On ground, Floyd begs for his “mama”, repeats that he can’t breathe. As his movements slow crowd members start yelling at police. “You think that’s cool”, ”He’s not responsive”, “You’re a bum, bro”.

DAY 2 (1/25/22)

A defense lawyer complains that the prosecution is trying to overwhelm the jury with a “tidal wave” of cumulative video. His objection does not seem to have an effect.

[Prosecution case continues](#)

Kimberly Meline, FBI. Prosecutors show more of the videos she synchronized. These track the encounter from beginning to end. Floyd is depicted sitting handcuffed, against a wall. Kueng angrily tells him to behave, Floyd says “I don’t want no problems.” Lane, Kueng and Floyd cross the street. Floyd resists getting in the police car. Chauvin and Thao arrive. Chauvin exercises “pain compliance” by pulling up on Floyd’s cuffs. Floyd is pulled out of the car and placed on the ground.

Floyd’s movements slow and he grows still. Bystanders express concern. One yells “he’s not responsive now, bro. Is he breathing right now? Check his pulse.” Kueng does so. A man named “Donald Williams” repeatedly yells at Thao to “get off his f... neck.” He protests that Floyd is “not f... moving,” calls Chauvin a “bum,” demands that officers check Floyd’s pulse. An off-duty firefighter walks over, does likewise.

Floyd, who is unconscious, is loaded into the ambulance. None of the officers seems distraught. Kueng later tells a bystander that Floyd was “uncooperative.”

Christopher Martin, Cup Foods clerk. Floyd gave Martin a phony \$20 bill for cigarettes. Martin said that he realized that immediately, and that Floyd seemed “high.” Martin said he intended to have the \$20 taken from his paycheck. But his manager told him to have Floyd come back and make it right. Martin and another employee went to the car and tried, but without success.

Martin later saw Floyd on the ground. He seemed “dead...not moving.” He took a video of officer Thao pushing a bystander onto the sidewalk. Officer Thao’s bodycam shows him pushing the man as well.

On cross-examination, Martin confirms that he later told the FBI that Floyd “was on something.” He also conceded that his co-worker didn’t seem to follow Thao’s instructions before he got pushed.

Charles McMillian, passer-by. McMillian observed the officers’ initial interaction with Floyd, then the struggle in the car. McMillian walked up and told Floyd to get in the car, that he was in handcuffs and couldn’t win. But Floyd said he was claustrophobic. After the officers put Floyd on the ground McMillian got worried. A video shows him imploring the officers to let Floyd breathe. McMillian testified that “I knew something bad was going to happen to Mr. Floyd... That he was going to die.”

On cross-examination, McMillian confirmed that he heard Lane offer to roll down the police car’s windows. On re-direct by the prosecutor, McMillian said that he didn’t observe Floyd direct violence or threats at any officer. “I didn’t see him resisting at all; I saw him begging.” On re-cross, McMillian was asked if he saw Floyd resisting getting in the squad car, then fighting with his legs and body (this behavior is clearly depicted on officer bodycam video.) No answer is apparent.

Jena Scurry, 9-1-1 dispatcher. She testified that the initial call for medical help was about “a mouth injury.” Nothing was said about someone being unconscious or not breathing. In such cases the matter would become a “rescue.” After a delay, the call was apparently upgraded.

DAY 3 (1/26/22)

Prosecution case continues

Derek Smith, paramedic. First on scene, testified Floyd was dead when encountered. Video shows Lane in the ambulance, checking Floyd's pulse.

On cross-examination, says that Floyd was treated for cardiac arrest. Agrees that Lane was helpful. Smith says he was trained that "excited delirium" (E.D.) can lend "superhuman strength" and cause cardiac arrest. Says that ketamine is used to sedate persons in its throes. Smith's notes indicate that Floyd was sweating excessively. Thao's defense lawyer notes that's consistent with E.D.

Jeremy Norton, firefighter/EMT. On arrival, overheard someone yell "you all killed that man." Scene felt unsafe but officer Thao didn't seem worried. An off-duty firefighter approached, said "I think they killed him." On cross-examination, says he was trained on E.D. Norton is skeptical about E.D., calling it a "catch all" term for agitated and struggling persons. He questions whether "it's solid science" and says that the AMA opposes the diagnosis.

Genevieve Hansen, off-duty firefighter. Says she was out for a walk, heard a woman yell "they were killing him." On approach noticed "the amount of people" on top of Mr. Floyd. He was unconscious and had seemingly emptied his bladder, "a sign of death or near death." Floyd clearly needed help but no medics were present. She told officer Thao to check Floyd's pulse but he didn't. He ordered her back on the sidewalk and said she should "know better" than to get involved. He was keeping Floyd from getting help. "It didn't seem like a normal scene."

On cross-examination Hansen agrees that her "bladder emptying" observation was incorrect. She denies that her "you can find me in the streets" comment to Lane was a threat.

DAY 4 (1/27/22)

Prosecution case continues

Inspector Katie Blackwell, former MPD training head. She testified that a police academy graduate is qualified to work on their own. Regulations require officers immediately report any breach of rules they observe. Officers must only use the "lowest level of force" possible, what an "objective" officer would find "reasonable." And once

they “gain compliance, then the force stops.” Officers are obligated to protect those they encounter and must intervene if inappropriate force is being used. Intervention was always a practice and became official policy in 2016.

Officer Blackwell discussed conscious and unconscious neck restraints. The latter can be used when escalating, fighting, or trying to save a life. They are “one more thing you can try before shooting somebody.” It takes about 15 seconds for a neck restraint to cause compliance.

She also discussed proning suspects out for handcuffing. If they are placed in the “maximal” position (face down, on their stomachs) it is “critical” and required by policy that they be placed on their side as soon as possible.

MPD policy requires treating persons compassionately. If there is a medical emergency officers must render first-aid and summon EMS.

Dr. Bradford Langenfeld, physician who treated George Floyd. Said that Floyd arrived in cardiac arrest wearing a chest device that provides compressions. Paramedics never found a pulse. He had reported that the most likely causes of Floyd’s cardiac arrest were “mechanical asphyxia” and excited delirium or “severe agitated state.” Fentanyl is a depressant that would slow breathing but not cause agitation. Dr. Langenfeld said that he hadn’t known that someone was on top of Floyd.

On cross-examination, Dr. Langenfeld said excited delirium is controversial because it’s over-diagnosed. It’s most often used when minorities are restrained by police. The AMA has also condemned it. Asked whether emergency physicians feel differently, he replied that excited delirium is a pre-hospital rather than in-hospital diagnosis. [Note: click [here](#) for the EMRA post about excited delirium, [here](#) for the ACEM white paper, and [here](#) for our related post.] Persons in E.D. can be delirious, irrational, combative, sweaty and show symptoms of mental illness or drug overdose. Dr. Langenfeld agreed that cardiac arrest could be caused by excessive sweating and use of drugs, and by using meth and fentanyl, then getting involved in a struggle.

On redirect, Dr. Langenfeld said that the struggle depicted in the videos was insufficient to cause cardiac arrest.

DAY 5 (1/28/22)

Prosecution case continues

Inspector Katie Blackwell, former MPD training head. She returned to the stand. Began with Thao. His 2018 refresher training instructed officers to use “the lowest level of force.” Neck restraints can’t be used for “passive” resisters. “Conscious” neck restraints can be used on active resisters, and an “unconscious” neck restraint for “active aggression.” When someone has been proned out, getting them up ASAP is necessary to prevent positional asphyxia. That’s emphasized in a 2012 medical examiner video which discusses the case of a man who suffocated in 2010.

Shifts to rookies Kueng and Lane. Reads orders that state officers are accountable for what they do and don’t do, and for the actions of other officers. According to policy, first officers on scene are in charge. So Lane and Kueng were in charge. What they and Thao did was “inconsistent” with use of force policy. Shown a photo of Chauvin’s knee on Floyd’s neck, she said this was improper, not a “trained technique,” and that Chauvin should have been in a side recovery position. Lawyers for Kueng and Lane object, saying their clients hadn’t been in a position to see what the photo depicts.

Floyd’s kicking constituted aggression, thus “active” resistance. Officers could have used a Taser. Chauvin’s knee on neck and his pulling up on Floyd’s handcuffed hand, “pain compliance,” were wrong because Floyd wasn’t resisting.

After Floyd went unconscious Chauvin didn’t move, risking positional asphyxia. Lane’s suggestion to roll Floyd over was correct. Faults officers for failure to communicate and failure to intervene to stop the use of excessive force. When Floyd went unconscious they were obligated to render aid. Same, when they found out he had no pulse. They weren’t held back from acting by the crowd, which didn’t pose “an immediate threat” and stayed on the sidewalk. Prosecutor plays video of crowd. Blackwell says all Thao did was watch them.

On cross-examination by Kueng’s lawyer, Blackwell disagreed that agency “culture” is set by senior leaders and through training. She concedes officers are only tested on “some parts” of the 537 pg. manual. She confirms DOJ is investigating alleged deficiencies at MPD, including officer training. Kueng’s lawyer asks about paramilitary aspects of the academy. Blackwell agrees that recruits must show “instant and unquestioned obedience” to academy staff. She says she tried to change things but couldn’t. She also denies that an FTO’s (field training officer) opinion could be the “sole”

reason for termination. (Chauvin was Kueng's FTO during his last two phases of training.)

Kueng's lawyer points out that officers must "attempt" to intervene when others use excessive force, but that Blackwell left that word out. Blackwell says there is no specific intervention scenario in training. Kueng's lawyer points out that "intervention" is not mentioned in the lesson plan or in the FTO handbook.

Blackwell agrees that Lane was by policy in charge of the encounter. But Kueng's lawyer points out that Chauvin, a 19-year veteran, ignored three requests to roll Floyd onto his side.

WRAP - WEEK 1 (prosecution case)

According to his attending physician, Mr. Floyd died from cardiac arrest brought on by "mechanical asphyxia" and "excited delirium." Focusing on the first cause, asphyxia, the prosecution emphasized Mr. Floyd's needlessly prolonged, forceful restraint, which continued even after an officer failed to detect a pulse and passers-by complained that the arrestee was unconscious. Because Chauvin controlled Mr. Floyd's positioning and was the one who persistently applied improper force to Mr. Floyd's upper body and neck, emphasis was placed on his colleagues' duty to intervene. It was also mentioned that MPD placed those first on scene (Kueng and Lane) in charge.

In cross-examination, defense lawyers sought to highlight the second cause of death, "excited delirium," whose principal component - Mr. Floyd's drug intoxication - preceded his arrest. They also challenged the notion that "intervention" was an actual practice and pointed out that it did not appear as a component of the agency's formal training program. Both of the officers first on scene - Lane and Kueng - were rookies, and the defense disputed that given the agency's militarized atmosphere, they could tell Chauvin, a 19-year veteran, what to do. Indeed, Chauvin ignored officer Lane's comment about "excited delirium" and three requests by Lane to roll Mr. Floyd onto his side.

WEEK 2

DAY 6 (1/31/22)

Prosecution case continues

Inspector Katie Blackwell. Her cross-examination resumes. Under questioning by Thao's lawyer, she confirmed that MPD provides extensive instruction on excited delirium (ExDS). Training materials describe its symptoms as "psychomotor agitation, anxiety, hallucinations, elevated body temperature, super human strength." Officer training videos show ExDS sufferers acting erratically and aggressively and officers responding forcefully, often pinning them down with their knees. Blackwell confirmed that none of the training videos (and only one of the slide shows) depicts the use of a side recovery position. (For an MPD PowerPoint about ExDS click [here](#), and for a training video click [here](#).)

Blackwell confirmed that officers are trained to physically contain ExDS sufferers until EMS arrives and sedates them with Ketamine. This practice, she confirms, is in direct conflict with a city civil rights report that disparages ketamine's use for this purpose as "wrong and uninformed."

Lane's attorney points out that chokeholds and neck restraints were permitted when his client was in the academy. Also, that the duty to intervene is to "stop *or attempt to stop*." Blackwell agrees that Lane de-escalated by getting Mr. Floyd out of his car and offering to roll down the police vehicle's windows. She also agreed that Lane had no duty to intervene while Mr. Floyd was actively resisting. And she also thought that Lane, who suggested that Mr. Floyd be rolled over and asked about his pulse, went beyond what was required by helping paramedics and joining them in the ambulance.

On redirect by the prosecutor, Blackwell confirmed that officers are supposed to stop using force and place persons in a side recovery position once they become compliant. When pressed on why MPD trains officers about ExDS, which is "controversial," she replied that persons who display its symptoms "can be very dangerous." She agreed that officer Lane did "nothing" even Floyd had no pulse and Chauvin's knee was pressing on his neck. Also, that none of the officers rendered aid. She also mentioned that an FTO could not by themselves fail a recruit.

On re-cross, Blackwell confirmed that placing a person on their side to prevent asphyxia is mentioned in only one place on a training Power Point. She also agreed that

a single symptom is enough to diagnose ExDS. Under challenge by Lane's lawyer, who referred to her previous positive comments about Lane's behavior, she insists that Lane did not render aid or stop anything from happening.

County medical examiner Andrew Baker. Dr. Baker, the pathologist at Mr. Floyd's autopsy, testified that "subdual restraint" (knee-on-neck) and neck compression contributed to Mr. Floyd's death through asphyxia. He confirmed that Mr. Floyd had an enlarged heart, hypertension and narrowing of the coronary arteries. But he didn't consider them sufficiently severe to contribute to Mr. Floyd's death. He also does not think that the fentanyl and meth in his system were an "immediate" cause of death.

DAY 7 (2/1/22)

[Prosecution case continues](#)

County medical examiner Andrew Baker. Under cross-examination by Thao's lawyer, Dr. Baker said that excited delirium is a syndrome, thus difficult to define. Its sufferers have usually ingested drugs. They sweat profusely, remove their clothes, and exhibit "super-human strength." Whether the syndrome is over- or under-used he couldn't say.

Asked about prone restraint, Dr. Baker said that his "understanding from the literature" is that it's "not inherently dangerous." His autopsy didn't reveal any damage to muscle or bone in Mr. Floyd's neck. Mr. Floyd's lack of blood spots in his eyes, while not definitive, is also inconsistent with the theory that critical blood vessels in his neck were compressed. Dr. Baker agreed it was possible that Floyd was experiencing an unrelated "cardiac event." Given his heart disease and hypertension, stressing the heart could make "deleterious" things happen.

Kueng's lawyer takes over cross-examination. Reacting to an image of Kueng's knees on Mr. Floyd, Dr. Baker says "I'm not even sure it's that high on Floyd's body." Lane's attorney then asks about his client's position on Mr. Floyd's legs. Dr. Baker said it was "completely unrelated to Mr. Floyd's ability to breathe."

Christopher Douglas, juvenile detention center training officer. He trained Lane on de-escalation and physical restraint while the accused worked as a juvenile corrections officer. Under direct examination Mr. Douglas said the objective is "to keep someone vertical and on their feet." He said that Lane took a class on positional asphyxia, and that one of the warning signs is a complaint by the person being detained that they can't breathe.

On cross-examination by Lane's lawyer, Mr. Douglas said he didn't check if Lane had been accused of using unreasonable force during his year-and-a-half of service.

WRAP - WEEK 2 (prosecution case). Note: This week was cut short by the news that defendant Lane tested positive for COVID. Excited delirium received extensive attention, and two witnesses (an MPD Inspector and the autopsy pathologist) confirmed that it may apply here. Mr. Floyd's medical history received considerable attention. While the pathologist felt that preexisting heart problems may have played a role, he mostly attributed Mr. Floyd's death to asphyxia brought on by Chauvin's use of his knee. Training videos played by the defense, though, showed officers using their knees to control persons supposedly suffering from ExDS. MPD's Inspector conceded that none depicted officers rolling suspects onto their sides. But she criticized the accused for not intervening even though Mr. Floyd had stopped resisting and was clearly in serious medical distress.

WEEK 3

DAY 8 (2/7/22)

[Trial was postponed](#) Wednesday, February 2 because one of the accused - presumably Lane, the only defendant not in court - tested positive for COVID-19.

[Prosecution case continues](#)

Dr. David M. Systrom, pulmonologist. Dr. Systrom is an expert retained by the prosecution. He testified that Mr. Floyd did not die from his pre-existing heart conditions, a heart attack, or an overdose of drugs. As confirmed by his repeated complaints of "I can't breathe," gradual loss of speech and loss of consciousness, and ending CO2 volume, "Mr. Floyd died of asphyxia." There were two main causes: forcible prone restraint against the asphalt, which impeded his breathing, and compression of the airway. Mr. Floyd's "respiratory failure" was "eminently reversible" until he passed out, and even then he could have survived had CPR been immediately begun.

Kueng's physical pressure on Mr. Floyd "added to the restriction" on breathing. Lane didn't directly affect Mr. Floyd's ability to take in oxygen, but pinning the victim's ankles helped keep him from "self-rescuing."

On cross-examination by Thao's lawyer, Dr. Systrom said there was no evidence that Mr. Floyd had sought medical care for his cardiac conditions. In reply to Kueng's lawyer,

who described the initial struggle between the officers and Mr. Floyd “ferocious,” he agreed “there was a struggle.”

Nicole Mackenzie, MPD medical support coordinator. Ms Mackenzie testified that officers are instructed about airway, breathing and circulation (“the ABC’s”) and are told to roll persons onto their sides (“side recovery position”) should they become unresponsive.

DAY 9 (2/8/22)

Prosecution case continues

Nicole Mackenzie, MPD medical support coordinator returns to the stand. Defendants Lane and Kueng were trained to administer CPR and identify persons in medical distress, including cardiac arrest. Thao received CPR in-service training in 2019. Ms. Mackenzie confirmed that excited delirium is a training topic. But in practice it’s actually “quite rare,” and that during her five years in the field “I may have seen this maybe once.” (Under cross, she later agrees that the symptoms of ExDS vary.) As to positional asphyxia, she testified that officers are *not* trained that being able to talk means someone can properly breathe. She also said that officers are instructed to place those in the throes of excited delirium on their sides.

On cross-examination, Thao’s lawyer displayed images and videos used during MPD training. Officers are shown placing their knees on suspect’s necks and, in one case, across an upper shoulder blade. Ms. Mackenzie confirms that’s similar to what Chauvin did. She agrees that officers are using their knees to control suspects, and that instructors didn’t step in and say that’s wrong. But she insists that the circumstances shown are “extreme” and that using a knee wasn’t part of her training. She’s then asked about the crowd’s potential impact on officer decision-making. Ms. Mackenzie concedes it could have affected the officers’ assessment of Mr. Floyd. She confirms personally observing bystanders “attacking” medical responders. She also said that the accused had no way to get EMS to the scene more quickly.

Lane’s lawyer began cross-examination by noting that medics didn’t immediately tear off Mr. Floyd’s clothing and apply CPR, “yet you’re willing to judge these officers, these rookie officers...” That drew an objection, which was sustained.

DAY 10 (2/9/22)

Prosecution case continues

Dr. Vik Bebarta, university medical instructor. Retained by the prosecution as an expert in emergency medicine, pharmacology and toxicology. He disagreed that heart disease and high blood pressure were contributing factors as indicated on the death certificate. Mr. Floyd did not exhibit signs of an impending heart attack, nor, as chemistry confirms, did he have one. Drugs in his system were in low concentrations and two - meth and fentanyl - counteract each other. So death wasn't due to an overdose. It was caused by his suffocation, which led to "a lack of oxygen to his brain." He could have survived if given CPR by "the officers that were standing on him."

On cross-examination, Thou's lawyer and Dr. Bebarta sparred about the underlying condition that best accounts for Mr. Floyd's general behavior. Reading from [a paper](#) about ExDS and AgDS ("agitated delirium") Dr. Bebarta testified that these aren't diagnoses but syndromes - collections of symptoms. He's often observed their presence. Mr. Floyd, he said, was not suffering from ExDS but from AgDS, which is connected with psychosis and drug use.

Lane's lawyer mentioned that officers Lane and Kueng were concerned about whether Mr. Floyd was breathing and checked his pulse. On redirect, Dr. Bebarta suggested that what was happening to Mr. Floyd was obvious.

McKenzie Anderson, forensic biologist, Minn. Bureau of Criminal Apprehension. [Her team gathered evidence from two vehicles Floyd had occupied:](#) the Mercedes he was found in, and the police car in which he was first placed. Pills and fragments in the Mercedes tested positive as meth.

DAY 11 (2/10/22)

Prosecution case continues

Under cross-examination, State forensic biologist McKenzie Anderson said that she was looking for blood evidence, counterfeit currency and a cell phone. She confirms to Lane's lawyer that DNA on a pill found in the police car matched Mr. Floyd.

Lieutenant Richard Zimmerman, MPD chief of homicide. Arrived on scene about 1 1/2 hours after Floyd's death. Testified that it's everyone's responsibility, from

the chief on down, that “if you see another officer using too much force or doing something illegal, you need to intervene and stop it.”

According to Lt. Zimmerman, the officers who handcuffed Mr. Floyd (Lane and Kueng) were in charge of the scene. He spoke with them first. Their accounts about the amount and type of force and the aid rendered to Mr. Floyd wound up being “totally different” from their body camera footage. That revealed a grossly excessive use of force and Chauvin’s appalling “knee on the neck” routine. Lt. Zimmerman strongly criticized the defendants’ failure to intervene and roll Mr. Floyd onto his side, and their failure to try to revive him when he became unresponsive.

On cross-examination, Kueng’s lawyer pointed out that officers are supposed to “attempt” to stop the improper use of force. Zimmerman conceded that Chauvin’s reputation as a “prick” and a “jerk” (his past words) made him a poor choice as a training officer. Thao’s lawyer challenged Zimmerman’s view that the crowd was not unruly. Zimmerman said that was his opinion, and confirmed that he had been threatened by crowds in the past. He also agreed that Chauvin, as senior officer, was “essentially” in charge.

Zimmerman agreed with Lane’s lawyer that reholstering a gun, as Lane did, is hard to do. But the lieutenant expressed skepticism that even a “40-day rookie,” as the lawyer described his client, should have believed Chauvin when he said, after Lane mentioned excited delirium, that an ambulance was coming.

On redirect about Lane, Zimmerman said that bystanders were appalled that “Mr. Floyd was slowly being killed” and simply wanted to help. As for intervening, it “means just that, not suggesting...Mr. Floyd was handcuffed by him and his partner and they should have taken care. It’s that simple.”

DAY 12 (2/11/22)

[Prosecution case continues](#)

Kelly McCarthy, Chief of Police, Mendota Heights, Minn. Ms. McCarthy chairs the state’s peace officer standards and training board. She confirmed that the defendants were duly certified police officers. She testified that positional asphyxia “is so close to the position that we put people in for handcuffing.” Chief McCarthy emphasized that persons in custody “are essentially your baby” and must receive appropriate care. She also affirmed officers’ obligation to insure that their colleagues are acting legally and ethically.

Alyssa Funari, bystander. Ms. Funari, then a 17-year old high school student, observed that Mr. Floyd was being forcibly held down and had Chauvin's knee on his neck. He was in obvious "distress" and complained "I can't breathe, you're on my neck, tell my mom I love her. It hurts." Videos are played in court. She is heard yelling "he's not moving in over a minute" and reproaching Thao with "you should be able to multitask" and "you stand behind your coworkers, right? Those are your partners, right?" Ms. Funari said that Mr. Floyd soon grew less vocal. "He wasn't telling us that he was in pain anymore, he was just accepting it."

On cross-examination by Thao's lawyer, Ms. Funari says she didn't hear anyone tell Floyd to "stop fighting."

Matthew Vogel, FBI special agent. Agent Vogel trains police about "color of law" civil rights violations. He used twelve videos to build a timeline of the episode. It begins at 8:08 pm as Lane and Kueng arrive. Six minutes later they're shown walking Mr. Floyd to the police car.

Mr. Floyd's ground restraint began at 8:19 pm. Twenty-five seconds later, as Kueng's forearm pressed into his neck, Mr. Floyd uttered his first "I can't breathe." About a minute later Lane asked about raising Mr. Floyd's legs. Chauvin and Kueng both said no. Thao asked Mr. Floyd "what are you on?" and Mr. Floyd responded "I can't breathe, a knee on my neck."

Thao summoned an ambulance "code 3" (emergency, lights and siren) at 8:21:23. About a minute later a bystander who had urged Mr. Floyd to get in the police car told the officers to get off Mr. Floyd's neck. About a minute after that Lane asked "should we roll him on his side?" Chauvin and Kueng again turned him down. Kueng: "Just leave 'em." Chauvin: "staying put the way you got 'em."

Moments later, at 8:23:57, Floyd uttered his last "please, I can't breathe" Thao said "OK, he's talking. It's hard to talk if you're not breathing." One minute later Lane said "Yeah, I think he's passing out." Mr. Floyd is unconscious at 8:25. Kueng and Lane both reported he was breathing. Thirty seconds later Lane again suggested rolling Mr. Floyd onto his side. He got no response. Off-duty firefighter Genevieve Hansen had been yelling to check Mr. Floyd's pulse, and Lane seconded it. Kueng quickly checked twice and reported that he couldn't detect one.

Mr. Floyd's restraint ended at 8:27. EMT's arrived at 8:27:26, about six minutes after Thao's call. Lane told them that Mr. Floyd is "not responsive." CPR in the ambulance began at 8:30:45.

WRAP - WEEK 3 (prosecution case)

Prosecution medical experts testified that Mr. Floyd was asphyxiated by physical pressure. They rejected the notion that he had a heart attack and insisted that neither drug use nor pre-existing medical conditions played a significant role in his death. Most of the blame was placed on Chauvin's use of his knee. Kueng's application of pressure was also mentioned. Most damningly, the experts agreed that Mr. Floyd might have survived had officers promptly initiated CPR. Records showed that each defendant had been trained on the technique.

Of course, struggling with suspects carries risks. Indeed, a policing expert said that asphyxia "is so close to the position that we put people in for handcuffing." There's been abundant testimony that officers are trained to roll persons onto their sides as soon as possible. Defendant Lane's repeated suggestions to do exactly that featured prominently in the videos.

But did his "suggestions" amount to "intervention"? Policing experts have emphasized that officers are both trained *and* required by regulations to intervene when an officer misbehaves. An MPD commander testified that intervening is much more than "just suggesting." Yet Lane and Kueng were rookies, so his testimony that as the initial officers on scene they were actually in charge falls flat. Indeed, the witness conceded on cross-examination that Chauvin, by far the most senior officer, was "essentially" in command. On redirect, though, he threw in that Lane and Kueng "should have taken care. It's that simple."

But is it *really*?

WEEK 4

DAY 13 (2/14/22)

Prosecution case continues

[Timothy Longo Sr., Chief of Police, University of Virginia](#). Acting as an (unpaid) prosecution expert, Chief Longo called Mr. Floyd's forceful and prolonged restraint "inconsistent with generally accepted police practices." Mr. Floyd, he noted, had only resisted to avoid being placed in the police car, and the use of force that followed was grossly disproportionate to any possible threat he might have posed. Chief Longo testified that there was no legitimate reason to put Mr. Floyd on the ground. He

also said that officers are well aware that doing so, and particularly when someone is handcuffed, can imperil their breathing, so they know to promptly bring them to their feet.

Chief Longo emphasized that officers have an “absolute” duty to care for persons in their custody and to “protect people who can't protect themselves.” Accordingly, he sharply criticized the defendants’ failure to “affirmative steps, to do something” about Chauvin’s misuse of force. During a reportedly loud and bitter exchange with Lane’s lawyer, Chief Longo called his client’s requests to roll Mr. Floyd onto his side insufficient. Brushing aside the objection that repositioning Mr. Floyd would have required officers to use force against their superior, Chief Longo pointed out that the defendants never even asked Chauvin to remove his knee.

[Darnella Frazier, bystander](#). Ms. Frazier, then sixteen years old, filmed the officers’ encounter with Mr. Floyd. She watched as he gradually lost consciousness. “Over time, he kind of just became weaker and eventually just stopped making sounds overall.” Ms. Frazier said that Mr. Floyd wasn’t resisting the officers but only trying “to breathe and get more oxygen.” Then-officer Thao was “patrolling and protecting,” but the only person who needed protection was lying on the ground.

Prosecution rests.

DAY 14 (2/15/22)

Defense case begins

Defendant Tou Thao took the stand. [His lawyer posted a 2009 training photo](#) depicting Thao and a classmate holding down a prone actor-suspect. Thao testified that they were using their knees as trained, and that instructors never said that doing that was improper. Thao confirmed that his training was military-style, and his lawyer posted images of trainees running and marching in formation. After the academy Thao was laid off and worked as a hospital security guard. He helped restrain patients and noticed that “excited delirium” was sometimes noted on their medical records.

[Thao’s lawyer switched to the episode with Mr. Floyd](#). Thao testified that he and Chauvin heard that Lane and Kueng were having problems so they hurried to help. Mr. Floyd seemed to be on drugs and in a state of excited delirium. In eight years as a cop he had “not seen this much of a struggle” to get someone into a police car. Thao said that he subsequently assumed the role of “human traffic cone” and also sought to control the crowd that had formed.

[During cross-examination](#) the prosecutor mentioned that using a knee to control “is entirely different than using a knee on their neck when they’re already handcuffed.” Thao confirmed that one can only use the force that’s reasonable under the circumstances. He agreed that since he and Chauvin were backup officers, the decision to arrest was Lane and Kueng’s to make. He also agreed that one can’t ignore “I can’t breathe” just because someone else said so untruthfully.

Thao disagreed that male officers, due to their unique vulnerability, can safely straddle a suspect to keep them from “reanimating”. He conceded that once suspects are handcuffed and under control they should be rolled onto their side. But when the prosecutor characterized Mr. Floyd’s “please” and “Mister officer” as respectful requests, and noted that he didn’t flee, Thao disagreed. “He escaped out of the squad car.”

Thao said that he suspected Mr. Floyd had “a drug issue.” He agreed that he could “generally” observe his colleagues’ interaction with Mr. Floyd. He saw Chauvin’s knee on Mr. Floyd’s neck, heard Mr. Floyd say “I can’t breathe,” and noticed that Mr. Floyd had gone silent and was possibly unconscious. Videos from the third minute of the restraint depict Thao looking down as he stood near his partners and Chauvin. He conceded the “possibility” that by then Mr. Floyd had altogether stopped resisting.

DAY 15 (2/16/22)

[Defense case continues](#)

Defendant Tou Thao remained under cross-examination. Challenged about images that depict Mr. Floyd being held down after he stops resisting, Thao said they showed that “the restraint was successfully working.” And if Mr. Floyd suffered from ExDS, as he seemed to, he had to be kept on the ground until EMS arrived as he could again pose a threat. As restraint continued bystanders asked him to check on Mr. Floyd. But Thao said that was his colleagues’ job, and that his was crowd control. (When off-duty firefighter Genevieve Hansen asked him to check Floyd’s pulse, Thao responded “I’m busy trying to deal with you guys.”) During the fifth minute of restraint, when Floyd spoke what would be his last words, Thao told the crowd “it’s hard to talk if you’re not breathing.” Thao agrees he never told Chauvin to get off Mr. Floyd. He trusted “the 19-year veteran” to do the right thing,

On redirect, Thao asserted that Mr. Floyd was suffering from ExDS and “to save his life we need to hold him down for medical personnel.”

Two character witnesses briefly took the stand. Thao’s wife, Sheng Yang, testified that her husband was a truthful person.

Thao's defense rests. Kueng's defense begins.

Joni Kueng, the mother of defendant J. Alexander Kueng, called her son compassionate and law-abiding. They were not cross-examined.

Defendant J. Alexander Kueng takes the stand. He began as a Community Service Officer. His training then included a brief mention of the duty to intervene. That responsibility was also briefly addressed at the academy with an example that showed an officer violently punching, stomping and kicking a suspect. What the academy *did* emphasize was that “the chain of command is not to be breached.” A field training officer (FTO) was a “mentor, role model, educator, terminator.” Chauvin, his FTO through half his training, was “by the book,” highly thought of and deferred to by others.

Kueng responded to the call with Lane. He described Mr. Floyd as behaving erratically, as though he was on drugs. And in the car he got extremely combative. Kueng said he's dealt with strong men but “never struggled as with Mr. Floyd.” As for who was in charge, policy says it's the senior officer in the first car on scene. But in actual practice it's always the senior officer, period. And once Chauvin arrived, it was indisputably him.

Kueng testified that he held Floyd down as he did because “the hips are very important for generating power and ultimately I wanted to avoid the spine.” He saw Chauvin's knee on Mr. Floyd's upper back and neck area, although not precisely where. He testified that he learned during training that if someone can speak they can breathe. As to his “leave him, yep” remark when Lane asked about raising Floyd's legs, he was just passing on what Chauvin said in case his partner, because of his position, couldn't hear.

Kueng said that he told Chauvin he couldn't find a pulse. But until Lane returned from the ambulance he hadn't considered Mr. Floyd as being in dire straits. He thought that maybe the handcuffs were causing a weak pulse, and that in a “more controlled environment” he would “spring back to life.”

DAY 16 (2/17/22)

[Defense case continues](#)

Cross-examination of J. Alexander Kueng. Kueng agreed that if there's no pulse and someone's not breathing “time is of the essence.” Disagreeing with the prosecutor, he insisted that Floyd's behavior was consistent with excited delirium. In

case of ExDS he was trained to keep the suspect restrained and call for EMT's. When the prosecutor says "in side recovery position?" Kueng replied "when it's safe to do so." He said he did not focus on Chauvin's knee position and was not himself pressing into Mr. Floyd - just trying to keep his balance. He confirmed checking Mr. Floyd's pulse twice during the latter stages of his restraint. Kueng acknowledged a "brief moment of levity" after Mr. Floyd was removed.

Kueng agreed that MPD policy placed Lane in charge because he was senior to Kueng and they were first on scene. Kueng confirmed that he responded "no" when Lane asked about rolling Mr. Floyd onto his side. He disagreed that Chauvin "didn't have control over your employment." He said that he was still on probation and said that Chauvin could "unilaterally" get him fired.

As on the previous day, Kueng said he didn't think Mr. Floyd was in dire straits. He didn't take a confirmatory carotid pulse or start CPR because ExDS still made Mr. Floyd potentially dangerous and it would have required moving him. Challenged about not telling Lt. Zimmerman that Chauvin had his knee on Mr. Floyd's neck, Kueng said that was for Chauvin to mention. He agreed that the duty to intervene trumps worries about repercussions from a superior.

Stephen Ijames, Asst. Chief (ret.) Springfield (MO) Police Department. Chief Ijames testified as an expert witness for the defense. He said that MPD's "duty to intervene" policy is "inadequate" and relies on an "overly simplistic example" (it depicts an officer beating a handcuffed man) that "does nothing to train an officer." He added that for new cops a police department's "culture" is set by a training officer. Chief Ijames agreed that once Mr. Floyd was on the ground and under control excessive force was used. But he added that officers in Kueng's position would defer to their seniors.

Under cross-examination, Chief Ijames confirmed that Kueng was "authorized to perform the same duties" as Chauvin, but added that new cops don't perform like experienced officers. He confirmed that Kueng "lacked the training and experience to recognize Mr. Chauvin's excessive use of force." Chief Ijames interpreted Chauvin's response when asked to roll Mr. Floyd over as "a denial" of the request. He agreed that persons suffering from ExDS should be rolled over, but only "when safe and practical." He also agreed that the bystanders did not seem to be threatening the officers.

Kueng's defense rests. Lane's defense begins.

Gary Robert Nelson, retired MPD Lieutenant. Mr. Nelson, who retired in 2020, worked a wide range of assignments during a 25-year career. He described MPD's paramilitary culture and emphasized the influence of rank and seniority. He said that

experienced officers - i.e., Chauvin - would always be in charge of situations. But he also conceded that “I was just following orders” is not a defense, and confirmed that officers are accountable for what they do *and* fail to do.

Trial is scheduled to resume Monday, 2/21.

WRAP - WEEK 4 (prosecution and defense cases)

As the prosecution case came to a close, its final expert, a police chief, re-emphasized the “grossly disproportionate” use of force on Mr. Floyd, criticized the defendants’ failure to intervene despite his clear distress, and dismissed concerns that it would have required officers to use force against their superior. A bystander then closed with a tearful account of Mr. Floyd’s descent into unconsciousness as defendant Thao ignored her protests and busied himself “patrolling and protecting.”

Each defendant is taking the stand. Chauvin’s partner, former cop Tou Thao, testified first. He said that academy instructors taught him to use his knees (a training photo was posted to that effect.) After eight years on the job he had “not seen this much of a struggle.” Mr. Floyd seemed to be on drugs and suffering from excited delirium, so he had to be restrained until EMT arrived. Chauvin used his knee and Mr. Floyd complained that he couldn’t breathe. But if someone can speak, they’re breathing. Thao also assumed that Chauvin, “a 19-year veteran,” knew what he was doing.

J. Alexander Kueng, the most junior officer on scene, testified that senior officers are always in charge and that “the chain of command is not to be breached.” His training about intervening mostly consisted of an example that showed an officer violently assaulting someone. Chauvin, his past field training officer, was “by the book” and highly regarded. Kueng was on probation and Chauvin could get him fired. Kueng said that he had “never struggled as with Mr. Floyd.” Mr. Floyd didn’t seem to be in dire straits. Kueng was trained that if someone can speak they can breathe, and that persons in excited delirium should be restrained until EMT’s arrive. A side recovery position can be used “when it’s safe to do so.”

A retired police chief testified as an expert for the defense. He called MPD’s “duty to intervene” policy simplistic and essentially useless. Kueng had insufficient training and experience to recognize that Chauvin was using excessive force. And as a subordinate he would be expected to defer to his seniors. As for rolling Mr. Floyd over, that can only be done when “safe and practical.” Another defense expert, a retired MPD lieutenant, emphasized the paramilitary aspects of policing and the primacy of rank and seniority. In practice, senior officers are always in charge.

WEEK 5

DAY 17 (2/21/22)

Defense case continues

[Defendant Thomas Lane takes the stand](#). When the episode occurred Lane was on his fourth shift as a full-fledged cop. He had been on about 130 calls while under supervision. Lane knew that Chauvin was a long-time cop, “a guy that had been in a lot of serious situations and could handle himself.”

Lane said that Mr. Floyd, a large man, was at first “out of control.” During the struggle to place him in the police car Mr. Floyd struck his head and started bleeding from the mouth. Lane called an ambulance “Code 2,” meaning non-urgent (that was later stepped up to “Code 3”). Training for excited delirium was to hold someone in place until medics arrived and injected ketamine. Lane suggested using a hobble device, which would have allowed placing Mr. Floyd on his side. But with an ambulance coming Thao didn’t want to complicate things.

Lane didn’t get a close look, but Chauvin’s knee “appeared to be just kind of holding at the base of (Floyd's) neck and shoulder.” Lane said he told Chauvin that he thought Mr. Floyd was in excited delirium. Chauvin replied “that's why we got him on his stomach and that's why the ambulance is coming.” Lane didn’t press the point. But once Floyd stopped resisting he asked “should we roll him on the side?”. Chauvin replied “nope, we’re good like this.” Lane soon repeated his request to roll Mr. Floyd over so they could “better assess” his condition. But Chauvin “just kind of avoided that and asked if we were OK.”

Under cross-examination Lane conceded that he had never before seen an officer use his knee on the neck of someone lying on their stomach. He agreed that the duty to protect and render aid overrode any fealty to a superior. Lane also conceded that after a point he stopped interjecting himself. But he insisted that he thought Mr. Floyd had kept on breathing and was “all right” until he saw his face on the stretcher. Lane teared up as he explained why he accompanied Mr. Floyd into the ambulance. “Just based on when Mr. Floyd was turned over, he didn't look good and I just felt like, the situation, he might need a hand.” He quickly learned that Mr. Floyd was in cardiac arrest.

Trial testimony ends

DAY 18 (2/22/22)

Closing arguments

Prosecution. Assistant U.S. Attorney Manda Sertich said that Chauvin slowly killed Floyd “in broad daylight on a public street.” Yet the accused did nothing. Bystanders realized that Mr. Floyd needed help and demanded that Thao step in. But he mocked the victim, telling the crowd that’s “why you don’t do drugs.” Kueng “laughed” when Chauvin said that Floyd talked a lot for someone who couldn’t breathe. And once Chauvin turned down his requests to roll Floyd over, Lane backed off.

To prove a civil rights violation one must demonstrate the defendants’ “willfulness” - meaning “bad purpose.” That was obvious. “These defendants knew what was happening, and contrary to their training, contrary to common sense, contrary to basic human decency, they did nothing to stop Derek Chauvin or help George Floyd.” Letting someone die so as not to upset a colleague is plainly unacceptable. Intervening is “what we expect from [police officers] as a community, because that’s what the constitution demands: To act.”

Defense. Robert Paule, Tou Thao’s lawyer, pointed out that three officers couldn’t get Mr. Floyd in the squad car. Mr. Floyd clearly displayed the “superhuman strength” characteristic of excited delirium. Training that his client received about ExDS depicts officers using their knees on people’s necks as a means of restraint. An ambulance was summoned, and its urgency was soon upgraded. “They didn’t do that for a bad purpose. They did that to get medical people there quickly.”

Tom Plunkett, J. Alexander Kueng’s lawyer, asserted that his client’s training was inadequate. As a rookie, Kueng had no alternative but to rely on his former training officer, Chauvin. “He respected this person. He looked up to this person. He relied on this person’s experience.” He also implored jurors to be fair and honest, “the exact opposite of a mob.”

Earl Gray, Thomas Lane’s lawyer, echoed these arguments. He expressed astonishment that his client was even charged (he attributed it to “politics,” and an objection was overruled.) Like Kueng, Lane was a rookie. He “can’t argue with [Chauvin]...that’s common sense...Chauvin was going to be the leader of the pack with these two kids.” Lane had suggested that Floyd be rolled over. But Chauvin didn’t say “maybe.” He said “no.” Paramedics also praised his helpfulness. “Doesn’t that show that he was not deliberately indifferent?” protested Gray. “Isn’t that substantial evidence?”

Rebuttal by the prosecution. Assistant U.S. Attorney LeeAnn Bell emphasized that once Mr. Floyd was on the on the ground and had stopped resisting - indeed, he soon went unconscious - the continued use of force was plainly unreasonable. Training required that the defendants roll Mr. Floyd on his side. But they didn't. Lane could have checked Mr. Floyd's carotid pulse and started CPR. But he didn't. "This is a crime of failing to do something...They knew what their training was. They knew what they were supposed to do and they didn't do it." And there are no "free passes to the Constitution" for being brand-new on the job. "They chose not to take reasonable steps under the law, that is wilfulness...Evil happens when good men do nothing. This happened in part because these men did nothing."

Jury instructions. Thao and Kueng are accused of "willfully" - meaning, with a "bad purpose" - violating Floyd's right to be free from unreasonable seizure by failing to prevent the abuse of Mr. Floyd. If jurors agree that Thao and Kueng are guilty, they must also determine, for the purpose of sentence enhancement, whether that failure caused Mr. Floyd's death. In addition, Thao, Kueng and Lane are charged with willfully depriving Floyd of his right to due process of law by being purposely indifferent to his medical needs.

Verdict (2/24/22)

After deliberating thirteen hours over two days, jurors convicted the defendants as charged. [According to Attorney General Merrick B. Garland](#), the verdict "recognizes that two police officers [Thao and Kueng] violated the Constitution by failing to intervene to stop another officer from killing George Floyd, and three officers [Thao, Kueng and Lane] violated the Constitution by failing to provide aid to Mr. Floyd in time to prevent his death." For the Justice Department's concise summary of the evidence and of each officer's alleged role, click [here](#).

Possible sentences range from one year to life. A sentence enhancement is also likely as jurors determined that the officers' conduct led to Mr. Floyd's death. All three defendants were released on bond. No sentencing date has yet been set. Thao, Kueng and Lane will report to Hennepin County court June 13th. for the beginning of their State trial on charges of aiding and abetting murder and manslaughter.