

**ANNE  
COUGHLIN:**

Good evening, everyone, and welcome to our webinar series that focuses on the issues that are arising out of the homicide of George Floyd. My name is Anne Coughlin. I am a professor of law here at UVA Law School, and I'm honored to be part of this series.

I wanted to start by saying a special word of thanks to Dean Ian Solomon and Professor Brian Williams of our Batten School of Leadership and Public Policy. They had the wisdom to jump on the fact that we need to have conversations about these issues now, and they took the lead in creating and cosponsoring the series.

I also want to send special thanks to Cortney Hawkins. She is the diversity and inclusion manager at the University Police Department, who's done a ton of work to support the creation of this program. I also want to thank our UPD Police Chief, Tim Longo, for his help and co-sponsorship.

So we've been processing and thinking about the issues arising out of Mr. Floyd's death since he was killed last May. As you know, the homicide took place in Minneapolis on May 25, 2020. And the homicide sparked a national, even an international, reckoning about police violence against our citizens. This reckoning has been painful, but in my estimation, it is long overdue. And it's essential that we continue to focus on these issues and move into a robust movement for lasting reforms.

The issues, as you all know, have taken on special salience in the past couple of weeks. Last summer, four officers were charged with the homicide of George Floyd. And the first of those officers, Derek Chauvin, is now on trial in a Minneapolis courtroom. Let me emphasize that it's very rare for police to face homicide charges in these cases, and it's also very rare for them to be convicted. The trial will give us insight into how the criminal justice system is responding to these cases in the moment, and it also will give us a window, again, into the shape of our necessary reform projects.

And so just a quick word about the series-- this is the first of four installments that we have planned, and we're very excited to bring them to you. Our objective is to try to give you the information that's necessary for you to follow the trial, for all of us to follow the trial, to understand the verdict in the cases-- that's a somewhat narrower issue than the broader reforms-- and then, also, to give you the information that you need to keep evaluating, thinking, and advocating in various reform movements.

So the additional panels-- the ones that will follow these-- are three. I believe that you will find information about these panels in our chat function. Certainly, you can find them by visiting the Batten website or the Law School's website. Our next panel will focus on understanding policing, how policing works in this area, particularly the use of force. We have a unit devoted to focusing on advocacy, activism, and healing. And then, finally, Dean Solomon will chair a conversation after the verdict comes out that gives us the opportunity to reflect and process our reactions to that verdict.

So I mentioned that we've been talking about processing these issues since the homicide of George Floyd. And again, I need to say up front how very painful this case is. And that's true for all of us, but I know that it is especially true for some of us. I say that we've been watching and processing. Other folks have been watching and weeping, or can't bring themselves to watch the videos or listen to the anguished testimony about the last moments of George Floyd's life.

So I wanted to encourage you to make sure that you're taking care of yourselves and taking care of each other in this moment. And if you need any additional resources or support, please reach out and ask for help. There's a lot of folks here at UVA and elsewhere who are poised to help you. And we'll be providing those resources in the chat function as well.

And now, as I move into my comments, I'm going to try to run this like a class for first-year law students, folks who have a deep interest in understanding how the criminal law works, and with a particular focus on the stakes in the trial against Chauvin and, ultimately, against the other three officers. And I want to make sure that I leave plenty of time for your questions so that I can know what issues you are most concerned to discuss. And so please feel free to put your questions in our Q&A function, and I will be doing my best to monitor those questions and to get to them as quickly as possible.

But first, my task, as I understand it, is to identify for you the lay of the land in the criminal courtroom, to give you an understanding of the precise homicide charges that Derek Chauvin faces, and then a preview of the charges that the other three officers, Officers Lane, Kueng, and Thao, might face as accomplices to the homicide committed by Chauvin.

And all of you will be familiar with the core concepts in a general way. And that is the case involves homicide charges. It involves both murder and manslaughter charges. And you'll be familiar with the term murder, manslaughter, murder in the first degree, murder in the second degree, manslaughter in the first, manslaughter in the second. If you are a student of popular culture or just a person who watches television, police procedurals, these are terms that you'll be familiar with. And that understanding is not unhelpful.

The problem is that that kind of general understanding really doesn't get you where you need to go. In any criminal case in the United States, you need to focus on the law of the state where the homicide occurred and where the trial is taking place. And of course, that brings us to Minnesota and the particular definitions of homicide that are codified in the Minnesota Penal Code and that have been alleged in the criminal complaint against Derek Chauvin and in criminal complaints against his accomplices.

So Chauvin faces three counts of homicide. Two of the counts are murder counts, and one of the counts is a manslaughter count. So he is charged with murder in the second degree, and that is what I will call the felony murder count. The charge there is that he committed a felony-- that is, he assaulted George Floyd-- and in the course of committing that felony, he caused the death of George Floyd. So the prosecution has to prove that he committed conduct with criminal intent that amounts to an assault and that he caused the death of George Floyd.

The third-degree murder count is a really interesting count, and it will be obscure to many of you because this does not get mentioned in the popular culture as much, as often. But this third-degree murder count is what we will call the depraved-mind count. And this is a theory of homicide that requires the state to prove that the defendant, here Derek Chauvin, caused the death of another person, and he did so by engaging in conduct that is highly dangerous and that evinces a depraved mind, that evinces callous and wanton disregard for the value of human life.

So we have the felony murder count, the depraved-mind murder count, and then he's also been charged with second-degree manslaughter, which says that he, with culpable negligence, caused the death of another human being, that is, George Floyd. So one thing that you want to notice right away about these homicide charges, which have distinct elements-- they are alternative and distinct ways of proving up a homicide case against Derek Chauvin.

You'll notice that none of these counts requires that the state prove that Derek Chauvin had a purpose or an intent to kill George Floyd. And you might be wondering why the state didn't charge him with intentional or purposeful homicide, having watched the video if you watched the video. As I mentioned, the video is absolutely excruciating to watch.

And in the video, as the time ticks by, as Chauvin continues to apply force and pressure to George Floyd's neck, which goes on, as you know, for roughly nine minutes, you begin to think, well, surely that would create an inference beyond a reasonable doubt that his purpose was to kill, or that he intended to kill George Floyd.

And we can talk about that question later if you'd like. Should the state have brought a charge of intentional homicide which would have allowed, perhaps, a first-degree murder charge if you could show a special kind of intent known as premeditation, or just a second-degree count based on intent to kill? But the state decided not to bring those charges.

And from where I sit, I can understand why. It's going to be difficult-- given Derek Chauvin's occupation, his role here as a police officer, it's going to be difficult to show that his purpose was to kill George Floyd. The defense obviously would argue strenuously that his purpose was to restrain him. His purpose was to take him into custody. There may have come a time when his restraint was excessive in some way, but it never was his purpose or his intent.

And so that's the description of that charge and, again, my understanding of why they didn't bring it, that they must have thought it would be a stretch to prove purpose to kill. So none of the charges require proof of purpose to kill. Each of the charges requires proof that Derek Chauvin engaged in conduct, which I take it is not a problem. He clearly engaged in conduct that we can argue was connected to the homicide of George Floyd, the neck restraint being the primary conduct.

And we have to have a finding by the jury that that conduct caused the death of George Floyd. And again, from watching the video, it might seem as if causation would not be a difficult problem for the prosecution. One of the things that is most chilling about the video is the sense, which was testified to by the witnesses who were bystanders, some of whom taped the encounter-- you get the sense that you are watching a person die. And you also get the sense that it is the neck restraint that is causing that death.

The problem is that the medical examiner's autopsy report is somewhat unclear on this front. And I don't mean to suggest that it creates-- I don't mean to suggest for a minute that it creates an absolute obstacle to the prosecution, quite the contrary. But what the ME concluded is that George Floyd died of heart failure. I've got the technical terms in front of me, and I hope you can bear with me as I look for them.

But the finding is that George Floyd died from cardiopulmonary arrest while being restrained by police officers. But the report then goes on to reveal that Mr. Floyd suffered from heart disease, hypertensive and arteriosclerotic heart disease. And it also stated that toxicology tests showed the presence of fentanyl as well as evidence of recent methamphetamine use.

And so when that ME report, the autopsy report was first released, a lot of folks jumped on it to say that perhaps the neck restraint did not asphyxiate Mr. Floyd, that he died of a heart attack because of his pre-existing heart conditions and the effects of the drugs that were present in his system or that he had previously used. And so this is complicated. Causation often is a complicated concept. Deaths frequently are caused by more than one thing, if you will.

But here, the defense is going to argue strenuously that-- I believe from watching the trial or reading about the trial-- that there is a reasonable doubt as to whether the neck restraint caused the death. There was an independent autopsy report commissioned by George Floyd's family, and it concluded, as did the medical examiner's report, that the death was a homicide. And the independent autopsy report singled out asphyxiation caused by the neck restraint as the cause of death.

And so that report, which will also be introduced into evidence, is much more conclusive on the causation front. Again, both reports allow the jury to conclude that Chauvin's neck restraint was a substantial causal factor. That's what's required. I should have said that before. Causation requires the jury to find that the defendant's conduct was a substantial causal factor.

But the problem is there's some confusion between the reports. And the concern on the side of the prosecution is that this confusion could create doubt in the jury's mind. The jury may say, we just aren't convinced beyond a reasonable doubt that the neck restraint caused the death. So causation is an issue. Again, it's not insurmountable. I just mention it to you because it is being litigated, and it potentially will be heavily litigated in the defense case.

So causation is an element that is under pressure in the case. The remaining elements in the cases that I want to talk about-- so you have to have conduct that is a substantial causal element in death. Those are the basic ingredients of homicide. And then, above and beyond that, there are additional elements.

And let's, first of all, take the depraved-mind murder charge. That's the third-degree murder charge. That, I understand, was the first charge that was brought against Derek Chauvin. Some of you may know that that charge was dismissed by the trial judge. The prosecution appealed, and an appellate court reinstated the third-degree depraved-mind charge. But we're still waiting to see whether the Minnesota Supreme Court might weigh in on that front and issue a ruling that the charge is improper.

But let's just assume that the depraved-mind charge is proper. And so the question for you-- and yes, here is where I have to counsel my law students. The criminal law is just not terribly clear on this front. What is a depraved mind? I take it that you can at least wrap your arms around, your mind around-- you can understand what it means to say that a defendant's purpose was to kill.

The prosecution has to show that the defendant intended to take life. Well, what does it mean to say that we convict someone of murder when they did not intend to take life-- that's the theory here; Chauvin did not intend to take life-- but rather, he acted with a depraved mind with respect to that outcome? And so depraved-mind murder is an ancient definition of homicide.

Minnesota, like many states, still follows it. These are definitions that were developed in England before the United States was founded, before the colonies were created. And it is, to our contemporary ears, a difficult term to explain, and we worry that juries won't understand it. So depraved mind-- the essence seems to be that the defendant committed conduct that created a very, very grave risk of death.

He didn't intend for anyone to die, but he went ahead and engaged in that risk-creating conduct, and he was utterly indifferent. He was callously and utterly indifferent to the possibility, indeed, the probability that death would occur. So there are some classic cases of what we call depraved-mind murder. People that play Russian roulette, for example, is the classic case, the point being that there is-- the people who play that game are willing to undertake that risk to get the kicks that the risk provides, and they're willing to do that even though the risk is that one among them will die.

So it's this conduct where you don't intend someone to die, but you don't care if they do, either. So that's a vague definition. It leaves a lot of room for the jury to decide, is this-- did this defendant engage in this depraved conduct? And I take it the prosecution's theory will be that there came a time during the nine minutes when Derek Chauvin was restraining George Floyd's neck where he went so far beyond the bounds of any remotely, possibly, proper policing, that he entered into this zone of extreme recklessness.

And the thing that you're going to want to do here is to think about the third-degree depraved-mind murder charge together with the second-degree manslaughter charge. The second-degree manslaughter charge and the third-degree depraved-mind murder charge are similar. Again, neither requires proof of purpose or intent to kill, but both involve a culpable mental state.

In the case of third-degree murder, it's some kind of extreme recklessness. You're fully aware of the risk you're running. And the manslaughter count is similar to that kind of conduct but lesser in degree, in the sense that the defendant isn't as culpable but is-- or is callous to the value of human life but is culpably negligent. So the defendant is aware that he's creating a risk. This is an unreasonable and substantial risk that brings him into criminal law territory, but it's less culpable than the third-degree depraved-mind murder.

So both of those charges have causation problems attached to them. And then the question is, if the jury is deliberating between the two of them, will they think that the case involves proof of a callous indifference to the value of Floyd's life, or merely culpable negligence, or that it wasn't negligent at all? The last charge I'll mention-- and then I'm going to turn to the policing issues-- is the second-degree felony murder charge.

So here, this is a very different theory. And many of you may be hostile to felony murder if you are thinking about it in a general context, if you're thinking about the whole universe of felony murder cases. But like the other two charges, the felony murder charge requires no proof of purpose to kill. Instead, what the prosecution must prove is that the defendant committed a qualifying felony, and in the course of carrying out that felony, he caused the death of another person.

In these cases, there is no inquiry whatsoever into the defendant's mental state, his purpose, recklessness or lack thereof with respect to the death. Got it? So this is a charge that is one of the darlings of prosecutors because, again, once you show that the defendant committed the predicate felony, you have to show he committed conduct that amounted to a felony and he had the intent that is necessary for that felony.

Here, the underlying felony is assault. He committed assault and battery of George Floyd. And in the course of carrying out that felony, he caused Floyd's death, no inquiry whatsoever into mental state with respect to the killing that occurred.

So these are the charges, and I'm really eager to hear what your questions are about the general criminal law principles. What I'm trying to do is to give you a snapshot of what these Minnesota statutes look like. And this has been rushed. It's a nutshell. This is a very complex area of the law. There's much more that I could say and will say, if some of you want to follow up with me.

So the next question that we have to consider, of course, is, how does the fact that Derek Chauvin and his colleagues were police officers alter this landscape, right? Because the law that I've just described to you-- I've had some references in my conversation to the fact that Chauvin was an officer. But I've described the law to you and, in effect, have asked you or invited you to think, oh, what if these folks were civilians?

So it's impossible to imagine, but if you stop and think for a minute, if a civilian had committed the conduct that Derek Chauvin had committed, I take it it would be a very different kind of case, just a really different kind of case. Why is that? Civilians have no authority to use force against each other. You are privileged to use force only in cases where you are defending yourself against the use of force. And there are restraints on our ability to use force against each other. We're forbidden to do that.

Police officers-- it's completely different. Police officers are authorized to apprehend, stop, and arrest criminal suspects. And in the course of doing that work, they are authorized to use force against the body of the subject. They are allowed to lay hands on the subject. They are allowed to use restraint on the subject if a subject tries to run away. And I mean, you all know this, right?

And so, OK, that's the argument that the police officers are going to make. When we undertook this conduct-- and it's true-- we were authorized to place George Floyd under arrest for suspicion of using a counterfeit \$20 to buy a pack of cigarettes. And he resisted arrest, and we tried a range of maneuvers to bring him into custody, and he continued to resist us. The upshot was we used these restraints, and alas, he died.

And so how does the adding the police lens in change the dynamics of this trial? And it changes the dynamics of the trial quite dramatically. And I take it that this is one of the reasons why it has been, in the past, almost unheard of for officers to be prosecuted for killing or injuring subjects whom they are taking into custody, very, very rare to see a prosecution, very rare to see a conviction.

And so this area of the law is, again, complicated, somewhat difficult to describe concisely. But the basic mantra that is applied here is that officers have to be reasonable under all the circumstances. Officers are entitled to use the amount of force that is reasonable to subdue the particular subject that they are confronting under the particular circumstances that are occurring around them.

The other thing that the courts do in this context is they will instruct juries that they are to consider the events from the perspective of a reasonable police officer in that encounter at the time of the encounter. They are not to use their 20/20 hindsight. It may turn out in these cases-- and as we know, alas, it often turns out to be the case-- that the person who was killed was not armed, or there's significant reason to doubt that the person posed a lethal threat.

But the notion is, hindsight tells us that this was a tragic mistake. But at the time the officer acted, the claim goes by the defense, the officer was behaving reasonably. And we can see, from watching the witnesses who are coming through already in the Chauvin trial, that this issue-- was the use of the neck restraint reasonable, and at what point did it become unreasonable? I should, say at what point, if ever, did it become unreasonable? Because the defense is going to argue that it was reasonable throughout.

Here's what I've been able to conclude, and then I'll stop and take your questions. It looks to me-- and I'm not saying that you have to agree with any of this. That is not my mission here. I'm just trying to describe and invite us all to be thinking about the normative implications that emerge from this description.

Again, when you're deciding whether an officer's conduct is reasonable, you want to be thinking about the nature of the crime for which they're apprehending the suspect, the appearance, the physical strength of the suspect, obviously how the suspect is behaving in the moment. What kinds of accounts or narratives can the police tell about the particular risks that the suspect took?

Were there threatening gestures? Were there movements that could be construed as reaching for a weapon? Was the defendant violent, acting out? All of those kinds of questions are going to come to the surface. And so with George Floyd, I take it that one big question in the case was the decision to place him under arrest at all.

I've been trying to do research into the severity of the charge that the officers were investigating. They were there because he had allegedly used a counterfeit \$20 to buy a pack of cigarettes. And it looks to me as if the Minnesota statutes say that if you pass counterfeit money that's worth less than \$1,000, you face a year in prison and a fine of \$3,000. So there, you've got that statute and that judgment about the severity of the crime.

Then, the officers, of course, made the decision to take him into custody. And they are going to be pointing to evidence-- and we've seen it on the videotape if you've watched the videotape-- that Floyd-- they're going to claim that Floyd was agitated. They're going to claim that he was agitated from the very beginning. He refused to get into the police car. They tried to get him into the police car. They used various maneuvers to try to get him into the car, to try to restrain him. And he kept struggling and fighting and then, ultimately, ended up on the street.

So I think that many of the experts are going to say that there was-- the police were authorized to use some forms of restraint against George Floyd, at least under the police directives that existed. The question, of course, is the continued use of the neck restraint after Floyd was on the ground. And from my eyes and from the eyes of many experts, including officers in Chauvin's own department, Floyd was no longer resisting. He was not resisting. Again, we now know he was dying.

Here, what I've been able to glean-- and I'm just speculating now-- is that the officers are going to claim that in their training, they are told that suspects often do this. They will stop struggling. They will feign-- that he was feigning, that he was pretending that he had ceased resisting, but that he might at any time rise up against them, and so that it was necessary for them to continue restraining him because they couldn't be sure that he wouldn't have suddenly come back to life and start resisting and fighting again.

The other thing that they're going to probably raise is the fact that they have reason to believe, they will say, that he was under the influence of drugs. There is some evidence out there that I've been able to read that suggests that they were told by the folks at Cub Foods that he seemed like he was high, and he was behaving in a very agitated way. And they will, again, claim that their training shows them that people who are under the influence of drugs can, again, often be extremely unpredictable, seem to be complying at one moment and then rise up and start fighting again. So they will make that argument.

Another argument that I've been really fascinated to notice, and that the prosecution is trying to work with, is that they seem to be poised to claim-- the thought is the defense is trying to develop the case that the crowd distracted the officers, that the officers confronted a very difficult set of circumstances. They had this man who would not comply. He was clearly high, they will say. And they were struggling to control him.

And suddenly, you have this crowd on site that was becoming unruly and that was interfering with their ability to carry out their duties as officers. And that could possibly be a causation argument, that it was the crowd who caused the death by distracting the officers. I don't know how that would work, but just that this was a very volatile, very difficult scene. The officers had a whole lot going on and that, in the moment, it was necessary for them to keep Floyd under control, to try to control the crowd, and so on and so forth.

Again, my understanding is that the prosecution is pushing back against that claim, that theory by showing the people and presenting the people as witnesses, the people who were in the crowd, and making it clear that this was a small group of people that were pleading with the officers to save George Floyd's life. So the question of whether the jury will believe that this use of force, though it seems to be plainly criminal, indeed, murderous if it were used by a civilian, that in the circumstances, the officers were authorized to use this level of force to take the man into custody and to restrain him once he started to fight with them.

So those are going to be some of the difficult issues that I see arising. Our next panel will be focusing much more heavily on the policing aspects. We have a whole array of policing experts, including law professor Rachel Harmon and Professor Brian Williams of the Batten School, who's another policing expert who will be able to give you more insight into that question. And I think that I will set aside, in the interest of taking your questions, the aiding and abetting case against the other three officers.

So Chauvin is on trial now. He faces the two murder counts, felony murder and depraved-mind murder, plus second-degree manslaughter. And then, in the future, we may see the other three officers tried on the theory that they assisted him, that they were his accomplices, and therefore that they should be guilty of the same crimes that he committed. And I took a look at those complaints and did a bunch of reading about accomplice liability in Minnesota.



Minnesota appears to have a somewhat more stringent approach to accomplice liability. It may require more conduct by the accomplice. What you're looking for is-- to hold someone liable as an accomplice, that these officers were aiders and abettors of Derek Chauvin, you have to show that they provided some assistance, that they did something that helped him complete the homicide, and that they shared his-- whatever mental state is required for the underlying crime, whether it be the intent to assault or the culpable negligence associated with manslaughter.

And at first, I thought that it might be the case that some of the officers would say, we were just there. We saw what was going on. We knew that he was restraining, but we didn't do anything. In some of the early videotapes, it was difficult to see what the other officers were doing. But as I read the criminal complaints and look at the more complex videos that have emerged, it seems to be quite clear that two of the officers also physically restrained George Floyd during the nine minutes.

One was positioned in restraining Floyd's legs. The other was restraining Floyd's back. And so those officers had hands on and were actually participating in the restraint that the prosecution argues caused the death. And the other officer, who was not physically restraining, engaged in various forms of conduct that prevented the bystanders-- he actively prevented bystanders from coming in and rendering aid and so forth.

So these three officers will not be in the same position as Derek Chauvin, and their theories of defense may well diverge. They are going to claim, he was our superior officer. We are police officers, and it was reasonable for us-- again, if the question is whether our conduct was reasonable in the moment under the circumstances, it was reasonable for us to follow the lead of our superior.

So I hope this has helped you. I hope that this helps you to understand what the stakes are before the jury, that the jury is going to be looking at these technical but somewhat vague homicide definitions. And obviously, they are going to be thinking about the overlay of policing. Was it reasonable for the police to believe that it was necessary for them to use this force? But those are the technical stakes in the criminal case.

And the thing that was striking to me as I was doing the reading is that it's possible that we would conclude that the officers did use excessive force, but that they're not guilty of homicide. There's space between those two conclusions. And you can see that most clearly in the area of causation. So the notion would be, yeah, this neck restraint was excessive. It was unreasonable. It was way out there, above and beyond any training that a reasonable police department would authorize. It was absolutely not appropriate, reasonable in any way, shape, or form.

But the defendant would argue, OK, that may be so, but he died because he had a drug overdose, something along those lines. So I just want you to be alert to these problems and the complexity of the homicide definitions as you move forward, thinking about how they interact with the police and questions. And now I am going to stop, and I'm going to do my best to see if there are questions in the Q&A. And I'm going to take a minute and look at them and see if I can read them.

So the first question, I really love. It comes from a law student. And it's a difficult one. And the question is whether causation would-- no, Dev-- so the question is whether the causation questions have the same payout for all the charges. When it comes to the depraved mind and the second-degree manslaughter charge, the question would be-- the causation question would be relevant because in those charges, one would have to show that the defendant was culpably negligent or grossly reckless with respect to the likelihood that death would occur.

And I agree that to the extent that there was obvious evidence about these underlying conditions or not, that that might affect what we might call the defendant's mental state. And Dev's question was whether the causation problem would affect the verdict on felony murder. And so I think technically not. In felony murder, again, you have to show that the defendant committed the underlying felony and that the felony caused, without regard to mental state, the death.

And here, the defendant's claim will be causation is not satisfied because he died of a heart attack because of his heart condition and/or because he died of a drug overdose. So they will focus on causation as an objective matter in each of the three counts. And then you're quite right, Dev, to suggest that the first two counts, the two murder counts, will require some kind of what we would call mental state with respect to causation.

But that underlying question, what caused the death objectively, will arise in all three claims, or all three counts. With that said, you're quite right to think that judges-- and I'm not sure whether juries are the same. But certainly, appellate opinions on causation in felony murder charges often doesn't give the same searching look at the objective causation question.

So Dean Solomon asks some absolutely wonderful questions about what I would do if I were the prosecutor. If I was the defense attorney, how would I try to undercut the charge? If I was on the jury, what would be the most compelling to me? And if I was the judge, what would I be most careful about? And those are incredibly difficult and interesting questions.

They're especially difficult and interesting for me because my work before I went to law school, to the extent that I was in criminal practice, was on the defense side. And so it is difficult for me to put myself in the shoes of prosecutors, and it has become increasingly difficult for me to put myself in the shoes of prosecutors. So I think what I'm going to do is I'm going to dodge the question that Dean Solomon raised a bit and instead invite all of you to reflect on what I think is a deep conflict that arises for some of us in this case.

That is, I know that many of you, or some of you-- not necessarily many of you, but some of you whom I've talked to-- have been persuaded by the George Floyd murder and the activism that followed as well as the long, long list of deaths of African-Americans that preceded George Floyd's murder. Many of you believe that it's time to really rethink policing, that it is time to defund the police, perhaps, or redistribute funds.

And I take it that that means that we also have to rethink criminalization across the board. And so we want prosecutors to be progressive and to bring charges, or not bring charges, to start coming up with alternative approaches to the criminal justice crisis we face. And of course, this case really tests our commitment to defunding the police. Maybe it's because the police are involved, and the police are the wrongdoers.

But suddenly, I find myself and all of the commitments that I have to reforming the criminal justice system so that we no longer have a carceral state-- I suddenly find myself thinking, this is really the occasion for prosecution. I really, really want to be tough on crime here. So how do I reconcile these two poles in my mind?

As I come down, I think the prosecutor, by bringing these murder charges, came down in a good place. If the prosecutor had brought a purposeful-- a charge that required proof of purpose, I think that would be a very hard sell to the jury, and the prosecution would be seen as overreaching, and it probably would turn the jury off. It would be difficult to say that at some point along the line, Chauvin shifted from a purpose to arrest and take into custody to a purpose to kill. It just really feels like a stretch on the evidence that we have.

To be candid with you, everybody deserves a good defense lawyer. That has been my mantra since I've entered the legal field and the legal academy more so. But it would be really hard for me to defend these lawyers, given my own reaction to-- to defend these police officers, given my reaction to that videotape. I take it that if the conclusion is that they did nothing different from what officers in their department were trained to do and were doing every day, that we might have qualms about finding them culpable. But that is not the story we're hearing, and that's very striking. Let's see.

Yeah, so Judith asks a great question. I've used the term "homicide" in referring to Floyd's death. But if it turns out that his death was caused by the heart problems or drugs, it wouldn't be appropriate to use the phrase "homicide." And I take it that that may well be correct. And so to the extent that any of you feel that I've been stacking the deck by using the phrase "homicide," I apologize for that.

I was trying to find out a precise general definition of homicide that we could use, but I'm really thinking about criminal homicide. I guess, Judith, I would defend myself by saying that the medical examiner, even though the medical examiner believes that there were a number of contributing causes, ruled the death to be a homicide, but yes, point well taken.

So Sarah asks the question that I have also found utterly fascinating, which is the defense theory that the crowd somehow contributed to Chauvin's decisions in the moment, that Chauvin's decisions to continue restraining George Floyd as the minutes ticked by and as his breath became weaker and more shallow-- the idea is that the crowd somehow contributed to this or caused this or something. And that was a theory that had not occurred to me.

I don't know. The prosecution, I am sure, anticipated this. And what I was reading today is that the prosecution has been careful to keep showing photographs of what the crowd was like. And this was not a protest. This was nothing like the very large marching-- marches that we saw after Floyd was killed. Instead, it was a group of people who were imploring the police to release the man, people who were offering to help, someone who was there offering assistance.

And yes, I take it their language was somewhat salty, even vulgar at times. But that doesn't seem to be-- there didn't seem to be any threat presented by these people that the officers had to keep under control. So we're in the moment right now of watching the trial, Sarah, blow by blow. It's almost as if we're there. And it's hard for me to think that this is going to be an important issue at the end of the day, and it's an issue that will just wash out. But it's certainly one that the defense is raising.

Oh, Aaron wants to know if I think that Chauvin will testify. I highly doubt it, but I just don't know. I think that he will-- well, let me say this. Sorry, I'm coughing. I do know that in some cases where officers have been acquitted, Aaron, that the testimony by the officer was very important to the jury. So there were a couple of cases when I was a youngster coming up in New York-- I'll spare you the details-- in which I thought, this is just clearly a homicide. The officer is going to be convicted. And as usual, the jury did not convict.

But one case that I can recall in particular-- the officer testified, and he was very, very persuasive on the stand about the fear that he felt in the moment, his terror in the moment, and also how broken up and hurt that he was about the fact that he had killed this human being, because, of course, it was discovered that the subject was not armed. One of the differences with the Floyd case is-- it's just a different case because Floyd wasn't armed.

I mean, again, I realize that officers-- and I'm looking forward to our panel next week-- are going to be able to point to all kinds of subtle circumstances that, for them, were clues that this person might pose an ongoing risk. But again, just for lay people watching that video, it really looked like there came a time pretty early in the neck restraint that he wasn't posing a risk at all. And so it's hard to understand what Chauvin would say about why he thought he had to keep restraining him. But I will say this. I can recall at least one case where the officer's testimony was, I believe, just utterly crucial in persuading the jury that they should acquit.

So I'm being told I can take one more question. And let me see if I can find one. Oh, I'm sorry. Oh. Oh, so Professor Williams asks the perfect question. What is the reasonable person standard or the reasonable police officer standard that applies? And this, I take it, is the million-dollar question.

The reasonable police officer standard that I believe is being applied in these homicide cases is the same as the reasonable police officer standard that's being applied by the United States Supreme Court and the federal courts when judging excessive force claims in the context of Fourth Amendment searches or seizures. And the reasonable police officer perspective in that context-- I'll just give you my two cents because that's all we have time for, is maybe one cent-- is that the reasonable police officer standard that the Supreme Court has created is an absolute fictional character.

It is a reasonable police officer in the circumstances. You don't take account of the officer's own subjective mental state, the officer's own statements about what he or she perceived was happening. You just ask, what would be objectively reasonable officer believe was necessary? And the court does tend to look at training manuals and then its own instincts about what kinds of actions and activities reasonable police officers might find threatening.

I've talked to Chief Longo about these questions, and I know that he has thought deeply about the issue of how we should define the reasonable police officer perspective in this context. And I believe that it's fair to say that Chief Longo agrees that we want to construct that perspective so that it takes account of the serious risks that officers face, but at the same time making sure that we give full value to the lives of the human beings that the officers are sworn to protect and defend as well as arrest and seize.

So this is a really crucial question, and this is one that we are going to see play out in this trial and have to think about a lot more. What is the connection between the Fourth Amendment construct of reasonableness and what is-- and the construct that we use in homicide cases?

I have to stop now. As you can see, I don't like to stop. My students know that I have a very bad habit of keeping everyone late, but I will not do that to this audience. Thank you all so much for attending. And again, I want to emphasize that I know how traumatic these events are-- or I don't know how traumatic they are for all of you. You're coming from different places, from different backgrounds. It's been very hard for me, as someone who is used to reading about and dealing with these tough issues.

And I know that these issues fall very heavily on our communities of color, particularly our African-American students, staff, neighbors, and faculty and friends. So please, take good care of yourselves. If anyone wants to reach out to me afterwards, I wish I could hang out with you a little bit in real space and hear your questions. But thank you so much for attending, and we look forward to seeing you at our next event next week. Good night.