

Episode 60: The George Floyd Case

In this episode, In the Know looks at the criminal justice system and talks to legal professionals to get some perspective on how police brutality is dealt with in the courts.

Megan Germundson

MEGAN PALMER: Happy Thursday, and thank you for joining us. This month, the team at “In The Know” has been following the George Floyd protests and the history of police brutality in the Twin Cities. Now, we are looking toward the future. Reporter Megan Germundson has the latest on what we can anticipate from the legal battle to come.

MEGAN GERMUNDSON: Hey everyone, I’m Megan Germundson, and this is “In The Know.”

NEWSREEL OF TELEVISION ANCHORS REPORTING ON THE GEORGE FLOYD CASE AND RELATED BLACK LIVES MATTER PROTESTS

GERMUNDSON: As the case against the four former Minneapolis police officers charged in the killing of George Floyd unfolds, we wanted to get a better understanding of what could happen in the courts and what happens when race is at the center of a criminal trial.

The Minnesota Association of Black Lawyers organized a silent protest at the Hennepin County Government Center against systemic bias within the justice system. And as the demonstrators stood in the government center, Derek Chauvin made his first appearance in court just across the street.

REVOLVING DOOR — FADE IN AND PLAY UNDER TRACK

GERMUNDSON: On June 8, I walked into the government center through the one door not locked and boarded up with plywood.

ESCALATOR — FADE IN AND PLAY UNDER TRACK

GERMUNDSON: As I made my way up an escalator to the main floor, directly in front of me stood a silent, socially distant crowd of lawyers dressed in black suits. The plaza, which is usually bustling with people, was silent and still. The sounds of quiet footsteps and doors opening and closing echoed through the space.

AMBIENT NOISE FROM THE SILENT PROTEST — ORGANIZER STATING “IF YOU ARE ABLE TO, PLEASE TAKE A KNEE WITH US”

GERMUNDSON: The protest ended around 1:30, after the group took a knee for five minutes. Afterwards, people hung around to greet each other before heading back to work.

AMBIENT NOISE FROM PROTEST — FADE UNDER TRACK



In the Know: Breaking Down the U's News

ATHENA HOLLINS: My name is Athena Hollins and I am the senior director of diversity and foundations for the Minnesota state bar association, Hennepin County bar association and Ramsey County bar association.

I don't feel like I can say anything that hasn't already been said. You know, as Black people in Minnesota we're devastated that this continuously happens, and as Black lawyers we're especially concerned, because we know that if there's not justice for all of us, there's justice for none of us. And as lawyers, we represent the face of justice. And so that's why we decided to gather here and try to be a force for good and hopefully bring some attention to a very important issue.

PORTIA HAMPTON-FLOWERS: My name is Portia Hampton-Flowers. I'm a deputy city attorney for the city of St. Paul.

GERMUNDSON: And what were you doing here today in the [Hennepin County] Government Center Plaza?

HAMPTON-FLOWERS: Being present and reacting to what some seem to believe is new. I mean, this isn't new, it's just, people are paying more attention right now. And as long as they're paying attention, I want them to think about things in a way that they haven't before, which is – it's not about, you know, that one individual officer, it's about the laws that allow that kind of thing to happen.

AMBIENT NOISE FROM THE PROTEST – FADE UNDER TRACK

GERMUNDSON: Outside of the Government Center, kitty corner from the building's outdoor fountain, I could see a crowd of reporters surrounding Hennepin County Jail.

OUTDOOR COMMOTION NEAR THE GOVERNMENT CENTER – FADE UNDER TRACK

GERMUNDSON: The reporters were waiting in the 90-degree heat while the former police officer made his first court appearance inside.

OUTDOOR COMMOTION AND SOUND OF THE LIGHT RAIL – FADE OUT UNDER PHONE RING

PHONE RING

ABIGAIL CERRA: Hello, this is Abigail.

GERMUNDSON: I spoke with Abigail Cerra, a commissioner on the Minneapolis Police Conduct Oversight Commission to get some perspective on the George Floyd case and talk about how race intersects with the justice system.

CERRA: Well, this is probably going to be the hardest part of the interview.

My name is Abigail Cerra. I am an attorney in Minneapolis. I started my legal career with a federal clerkship in the United States district of New Mexico.

FADE UNDER TRACK

GERMUNDSON: Abigail Cerra was a Hennepin County public defender for five years and specialized in excessive force cases in her private practice. She's also worked in the Minneapolis Department of Civil Rights and has been serving on the Police Oversight Commission since February.

CERRA: The oversight commission doesn't do punishment or discipline or anything like that. The oversight commission looks at issues of policy, conduct and related matters. But we would not make the decision of yes, that should be discipline or no, that should not be discipline.

GERMUNDSON: So, would you say that police misconduct is common in Minneapolis?

CERRA: I would say police misconduct is absolutely common in Minneapolis. And, I say that actually not in my capacity as commissioner but through my work as an attorney – both as a public defender and then as a civil rights litigator. Absolutely. No question. This is common. This is a pattern in practice. This happens virtually every day in this city.

GERMUNDSON: Can you talk about the most common types of misconduct that you've seen?

CERRA: The most common misconduct I see is racial profiling. I should say racial and ethnic profiling. They tend to stop certain groups of people for certain crimes. They tend to pull over Black people for virtually any traffic offense of the sun, as one example. And then I would also say that the most common is just excessive force, excessive to the matter at hand. For example, even if they had a legal reason to make an arrest, I have seen many, many cases where that arrest became much more violent and escalated than it should have been legally, and that disproportionately affects Black and Brown suspects.

GERMUNDSON: So, for example, a fake bill results in a man's death.

CERRA: Yes. That is a perfect example. And I cannot figure out why they even showed up. The matter of passing a \$20 bill is maybe a gross misdemeanor, if they could prove that he forged it or knew it was forged, which is hard to do. Probably what it is, is a \$20 theft, which is actually a petty misdemeanor, which is a ticket. So, I can't believe that two squads even showed up for that kind of call, much less that the initial officer on the scene ordered George Floyd out of the car at gunpoint. When he was sitting in the car, not driving, not going anywhere, you know, obviously available to be questioned or to receive a ticket. It just escalated 10 times higher than it needed to be escalated. And then they killed him.

GERMUNDSON: Is it rare for officers to face charges or be convicted in cases of police brutality?

CERRA: Yes, it is extremely rare for them to face criminal charges and even more rare for them to be convicted.

GERMUNDSON: Cerra said that one of the reasons why it's so difficult to prove that a police officer committed a crime of violence is because prosecutors have to prove a special kind of intent in order to convict the officer. And this sort of intent is different from what is needed to convict a civilian.

CERRA: What the judge would tell the jury is that police officers are allowed to use force. They get to do that. And when you're reviewing this case jury, you're not using your 20/20 hindsight and your ability to look at this from a distance and analyze the scene, no. What you are meant to do is go back to the moment of the assault or the killing and think about whether an objective and reasonable officer would see the force as justified. So that's a very different standard than just an average civilian. Because for one thing, police officers do dangerous work. That's just – that's a fact, and that is part of their job. And that's in part why courts created this heightened standard around intent for police officers, just it's the nature of their work.

And that's what I think legal scholars would tell you is the difficulty. I think another difficulty is really just the culture of America and the way we place so much faith and credibility into police officers and prosecutors and government agencies. It's very, very hard to tell a jury of 12 people [that] this police officer is untrustworthy, or unreliable, or out of line, or anything like that? I think just psychically, that's a hard lift for a lot of people. That's changing. That's radically changing as we speak, but it is still something that's different. We are raised and we are cultured to believe that police officers are more trustworthy than the average citizen and more reliable. And, the law says they are justified in using force in a lot more circumstances. So that makes it very difficult to prove that the use of force or the murder or the assault is unjustified in the case of a police officer on duty.

GERMUNDSON: And when it comes to the George Floyd case, Cerra said that the former officers' intent and state of mind will be significant factors during the trial.

CERRA: It's really going to come down to what the jury thinks the officer's state of mind was during this killing. And then of course, that will apply to the other three officers as well, because aiding and abetting means that they intentionally aided, advised, hire[d] counsel or conspire[d] to commit a crime. So, there's a very strong intention piece there as well. They had to intentionally help Derek Chauvin commit third degree assault, essentially commit harm. And then add on top of that intention piece, that that's special requirement that I told you about for police officers, which is at the moment that this is happening, whether an objective and reasonable officer would see this force is justified. So, you can see where what's going on in the officer's head really becomes the turning point of guilt or innocence in this case.

GERMUNDSON: The cell phone video of George Floyd's killing seems to present clear evidence as to what happened that day. So, I asked Cerra how videos of police brutality actually play out during a trial.

CERRA: Well, let me just start by saying that trial is not a place for absolute truth and reconciliation. That's not what really happens at a criminal trial. There are lots of restrictions: evidentiary restrictions, constitutional restrictions. What piece of evidence can come in? What not? How much weight can you give to a certain piece of evidence? You know, there's just a lot of instructions around that. So it's going to look and feel very different than watching a video and then making a decision based on what you see on a video.

GERMUNDSON: George Floyd's killing has sparked nationwide protests that have garnered a lot of media attention, which, according to Cerra, could complicate the jury selection process.

CERRA: You have to find a jury, 12 people, probably two or three alternatives. Let's just say 15 people that have no predetermination, pre-decisions about this case. They're totally impartial. They'll listen to the evidence as presented and make a factual finding as to what they think happened, and they will vote guilty or not guilty based on the instructions from the judge. Now, I think it's going to be incredibly difficult to find, let's say 15 people who haven't heard about this at all and have no sort of preconceived notion of what they think should happen. None.

I think it's also going to be very tricky talking about other kinds of prejudice and bias that could come in, and race is going to be really at the forefront of this trial. I think the prosecution is going to use race to talk about the officer's intent and his bad intention and how he overreacted and was not justified or reasonable. And I think that's going to be a really primary issue in the trial. The defense attorneys and the prosecutors are both going to want to ask questions about race. Now, what I can tell you is a lot of judges don't allow that in other kinds of criminal cases – they don't want you to talk about race.

GERMUNDSON: In 2015, Cerra was working as a public defender when Jamar Clark was killed by Minneapolis police officers. Just days after the killing, Cerra was questioning a pool of jurors for an entirely separate case but could hear the chants from protesters while they were in trial.

CERRA: And you could hear chants, "Black lives matter, Black lives matter" up in the courtroom where we were. So, I just thought I would ask the jury, the jury pool. Do you have any thoughts about Black lives matter? What does that mean to you? You know, that kind of thing. And the judge said, no, that I wasn't allowed to ask that question or to pursue that line of questioning at all. So, I never did. I have no idea how any of them felt about it. And that actually went to the Minnesota Court of Appeals [that] said that was an appropriate ruling by the judge, that he didn't have to let me ask that question. And conviction was affirmed. So. But that was a different trial, entirely a different time. And that was also an instance where my client was the defendant, was Black. It's relevant to this conversation. And in this case, it's flipped, the defendant is the white police officer, and the murder victim is Black, is George Floyd. So perhaps in this instance, the judge would allow that kind of questioning.

GERMUNDSON: So, is it fair to say that race is sort of a taboo topic in court?

CERRA: Oh yeah, absolutely. Like I said, the judge wouldn't let me say, "What do you think of Black lives matter?" We could hear chants and Black lives matter downstairs. I wasn't allowed to question on race. I mean, it's absolutely taboo.

Yeah. That's one of the amazing things about the law is it's so unsatisfying to virtually everyone except lawyers. It doesn't talk about the elephant in the room. There's a lot of times where you have a trial, and there's like all this information kind of happening behind you, but you can't address it head on. And in this case – and I'm qualifying my words here in a legal, technical sense – race has got nothing to do with it in a criminal charge of murder. You're just. You're just looking at, as I said, was there an intent to cause physical harm? Were they acting with a depraved mind? What was the mindset?

I had a case where I was challenging a law, and I said that the enforcement of this law discriminates against Black people. So, like the words of the law don't say Black people are guilty, white people are innocent. That's not what the words of the law say, but in enforcing it, the reality is that it's only enforced against one group of people, and it's never enforced against the other group of people. You have to prove that with an unbelievable amount of evidence. You basically have to have a cop saying, "I arrested him, because he was Black and no other reason." And obviously, no one is going to ever say that. That's not the way racism expresses itself in the United States. Racism expresses itself in much more insidious, systemic ways. So presenting evidence of 80% of the people arrested are black and only 20% of people arrested are white. That wasn't sufficient in that instance to throw out the law or throw out that particular case. It's really, really tricky.

GERMUNDSON: So how are we supposed to be comfortable when we have all these different things in place, yet we still see these instances of police brutality and unnecessary force?

CERRA: If we want police accountability, I think we have to have court accountability. Prosecutors and judges allow this kind of conduct all the time. And when they say, “Oh, that use of force in this arrest was legal and constitutional, no problem.” Police officers learn that that’s legal and constitutional, and they do it again. And maybe the next time, the person actually dies, instead of merely sustaining very terrible injuries. So, there has to be accountability from the prosecutors to not cover up or bring charges for someone who’s been brutalized and to not train police officers to use excessive force.

So, to answer your question, we should not be comfortable with the level of accountability at all. We need more accountability for police, and we need more accountability for prosecutors, judges and really just the criminal justice system.

GERMUNDSON: Is there implicit bias training on the legal side?

CERRA: Yeah, we have to take two classes every three years. I don’t know. Let me use the pronoun “we” here. We need to do more. We, lawyers, we as a legal profession, we need to do a lot more, because, as I said earlier, there is systemic racial bias – just full stop that is present, and we can’t let it go any further. We have to stop. We have to change. It has to change. It has to change.

GERMUNDSON: Back at the lawyer’s protest, St. Paul City Attorney Lyndsey Olson acknowledged the need for change within the criminal justice system, as well.

LYNDESEY OLSON: I’m Lyndsey Olson. I’m the city attorney for St. Paul. The George Floyd case is devastating. It’s a level of unacceptable that we’ve been accepting for too long, and it’s really heartening to see the level of people standing up. And it’s been a rallying call for my office as well.

The police are a part of the three pillars of the rule of law that underpin every democratic society. And I think that this is a really important moment for us to take a really hard look at how the police have been built up: what they’re responsible for and how they do those things, and that word of dismantling or defunding the police is an important attention grabber. People stand up and listen to that. Something really important is happening here. I think it’s really important to educate yourself and look at what that really means when we’re saying that, when we’re talking about shifting not only the way that police do their job – not just use of force, not just those pieces that we’re used to. People say it’s just not enough, it’s not working – but going an additional step to look at readjusting, remaking what they do in our society to keep everybody safe, in an equitable way.

PROTEST CHANTING — FADE OUT

GERMUNDSON: A study by Mapping Police Violence found that “99% of killings by police officers from 2013-2019 have not resulted in officers being charged with a crime.” And that “Black people are 3 times more likely to be killed by police than white people.” Although race may not be explicitly acknowledged in court, it is undoubtedly at the center of many police brutality cases – and it is at the center of the George Floyd case.

PALMER: Thank you for joining us, we’ll see you next week.