

Race, Police, and Imperfect Justice **with Alexis Hoag, Rachel Harmon, and Daniel Harawa**

Discussion of high-profile cases at the intersection of race and policing

- Derek Chauvin trial for death of George Floyd
 - Former Minneapolis police officer Chauvin was convicted in 2021 of murder and manslaughter in the death of George Floyd. He was sentenced to 22 ½ years in prison.
 - Police officer convictions in deaths of civilians are rare. What were some of the factors in this case that led this outcome?
 - Public pressure and national attention
 - Public pressure to indict
 - Increased scrutiny of prosecutors
 - COVID-19 pandemic may have played a factor in increased public attention
 - Testimony of police chief and others within the Minneapolis Police Department that Chauvin violated department policy and training. Jurors find compelling testimony against the defendant from police officers within the same force.
 - Prior acts
 - Prior acts are not admissible if they are sought to be introduced to show criminal propensity. Its prejudicial effects outweigh its probative value. Evidence of prior acts may be admitted in limited circumstances if it's relevant to motive, intent, knowledge, or other elements of the crime.
 - Both defense and prosecution in Chauvin's case sought to introduce evidence of prior acts to bolster their cases. Prosecution was permitted to introduce evidence related to two incidents of Chauvin's prior acts, one of which involved kneeling on an arrestee. Defense was permitted to introduce some evidence related one incident involving Floyd's past arrest in which he allegedly swallowed a pill while being arrested.¹
 - Judge rejected most of the evidence sought to be introduced on prior acts by both sides to keep the jury focused on the incident at hand and to limit evidence that could unfairly prejudice the jury.

- Police killing of Breonna Taylor

¹ Tami Abdollah, *Derek Chauvin used force against suspects before George Floyd. The jury won't hear about 6 of those incidents*, USA TODAY, (April 1, 2021), <https://www.usatoday.com/story/news/nation/2021/04/01/derek-chauvin-trial-past-violence-force-arrestee-george-floyd/7020506002/>.

- Louisville police officers Jonathan Mattingly, Brett Hankison, and Myles Cosgrove executed a warrant at Breonna Taylor's apartment. There are disputes as to how the warrants were executed, i.e., whether police knocked and announced themselves. Breonna Taylor was shot and killed by an officer. None of the officers were indicted for Taylor's death. Hankinson was indicted for wanton endangerment for shots he fired that went through the wall into a neighbor's apartment.
- Grand jury proceeding
 - Grand jury proceedings are typically secret. Grand jurors are summoned, not selected like jurors from a pool. The prosecutor presents evidence to the grand jury and recommends certain charges. The prosecution has discretion over what evidence is presented to the jury and advise grand jurors on the law.
 - In the case involving Breonna's Taylor's death, the public learned information about the proceeding that they would normally not be privy to when a grand juror filed a motion to release the transcripts and obtain permission to speak about the proceedings, alleging that the prosecutor used the grand jury to "deflect accountability and responsibility."² The Kentucky Attorney General Daniel Cameron publicly stated that the only charge recommended to the grand jury was wanton endangerment.³
- No-knock warrants
 - Authorizes police officers to enter premises without knocking and announcing their presence. No-knock warrants are issued under the theory that if the police were to announce themselves, it would endanger the police or others or result in destruction of evidence.
 - Issues with no-knock warrants
 - Whether breaking down a person's door and swarming their house makes the execution of the warrant safer for the police and civilians.
 - When no-knock warrants are executed by SWAT teams who are militarized, does that increase risk to police and civilians?
 - How increased gun ownership in the U.S. amplify risk when no-knock warrants are executed.
 - Consequences amplified when there are mistakes in the warrant. There are documented incidences of inadequate judicial scrutiny of warrant applications, warrants listing incorrect information, or warrants executed on wrong addresses.
 - Movement in banning no-knock warrants

² Tessa Duvall and Darcy Costello, *AG Cameron to release Breonna Taylor grand jury records after juror complains he misled*, LOUISVILLE COURIER JOURNAL, (September 28, 2020), <https://www.courier-journal.com/story/news/local/breonna-taylor/2020/09/28/grand-juror-files-suit-seeking-release-transcript-breonna-taylor-case/3568388001/>.

³ *Ibid.*

- At the state level. E.g., [Oregon](#), [Florida](#), [Connecticut](#), [Tennessee](#), and [Virginia](#)
 - At the local level. E.g., [Louisville, Kentucky's "Breonna's Law"](#)
- Jeronimo Yanez trial for death of Philando Castile
 - Former St. Anthony police officer Yanez was charged with manslaughter and dangerous discharge of a firearm. He was acquitted in 2017.
 - Discussion of perception of dangerousness of Black men and how guns further complicate issue
 - Before being shot and killed, Castile told the officer that he had a legal gun and that he was not reaching for it, while reaching for his ID. Yanez claimed at trial that he believed Castile was reaching for his gun. The prosecution claimed that Yanez's fear was unreasonable and that someone who was reaching for a gun would not announce that they had a legal gun, as Castile did.
 - Is the officer's subjective belief of imminent danger objectively reasonable?
 - Guns raise the stakes and level of dangerousness
 - Do police perceive guns, whether legal or illegal, in the hands of Black men more dangerous?
 - Kyle Rittenhouse trial for deaths of Joseph Rosenbaum and Anthony Huber and injuring Gage Grosskreutz
 - Kyle Rittenhouse was acquitted of all charges, including homicide, in November 2021. At trial, Rittenhouse claimed he fired his gun in self-defense.
 - Police treatment of Rittenhouse at the time of his arrest
 - A video captured the scene in Kenosha after Rittenhouse had shot three people and approached police vehicles. It showed him walking toward the vehicles with his hands up and then the officers yelling at him to get out of the way. Rittenhouse later got in a friend's car and went back home to Illinois.
 - One of the officers testified in court that he had encountered a lot of people that night carrying guns and that he hadn't considered that Rittenhouse was surrendering to police when he was walking towards them.⁴
 - Kenosha police were criticized for their handling of Rittenhouse's the night of the shooting. Many questioned whether a young Black man would face similar treatment under the same circumstances.
 - Perception of the judge's treatment of the defendant

⁴ Stacy St. Clair and Christy Gutowski, *Kenosha cops explain why they ignored Kyle Rittenhouse's attempt to surrender after shooting*, CHICAGO TRIBUNE, (November 5, 2021), <https://www.chicagotribune.com/news/ct-kyle-rittenhouse-murder-trial-cops-ignore-surrender-20211105-m4n5mmnzjfhqoadls75q37wdi-story.html>.

- At the time of the trial, Judge Bruce Schroeder of Kenosha County Circuit Court drew notice for his testy exchanges with prosecutors and what some observers viewed as favorable treatment of the defense.⁵
- Self-defense issue
 - Wisconsin self-defense law ([WI Stat § 939.48](#))
 - In part: use of deadly force is not allowed “unless the actor reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself.”
 - Provocation
 - WI Stat § 939.48(2): “a person who engages in unlawful conduct of type likely to provoke others to attack him or her and thereby does provoke an attack is not entitled to claim the privilege of self-defense against such attack, except when the attack which ensues is of a type causing the person engaging in the unlawful conduct to reasonably believe that he or she is in imminent danger of death or great bodily harm. In such a case, the person engaging in the unlawful conduct is privileged to act in self-defense, but the person is not privileged to resort to the use of force intended or likely to cause death to the person's assailant unless the person reasonably believes he or she has exhausted every other reasonable means to escape from or otherwise avoid death or great bodily harm at the hands of his or her assailant.”
 - Some observers raised the point that by carrying an AR-15 to a protest, Rittenhouse was provoking a dangerous encounter. Wisconsin's provocation clause did not apply, however, in Rittenhouse's case because he was not engaging in unlawful conduct by carrying his legal gun. And as the provocation clause is written, and as the jury presumably accepted at trial, Rittenhouse's use of deadly force would be permitted because he reasonably believed he had exhausted every other reasonable means of escape.
 - Prior act
 - The prosecution attempted to introduce videos of Rittenhouse, one of which showed him wishing he had his AR-15 on his to shoot shoplifters. The judge ruled that the evidences of prior incidents were not admissible. At trial, the prosecutor attempted to question Rittenhouse about the particular incident believing

⁵ See Nicholas Reimann, *Judge In Rittenhouse Case Slammed With Accusations Of Bias—Here's Why*, FORBES, (November 11, 2021), <https://www.forbes.com/sites/nicholasreimann/2021/11/11/judge-in-rittenhouse-case-slammed-with-accusations-of-bias-heres-why/?sh=304208494e9b>.

that it was newly relevant to the case to impeach Rittenhouse but was admonished and blocked by the judge.⁶

- Travis McMichael, Gregory McMichael, and William Bryan trial for death of Ahmaud Arbery
 - The three defendants were found guilty of murder in November 2021. They were sentenced to life in January 2022. At trial, the defendants claimed that they acted in self-defense while effectuating a citizen’s arrest.
 - Georgia’s citizen’s arrest law
 - O.C.G.A. § 17-4-60: a private person may arrest someone “if the offense is committed in his presence or within his immediate knowledge.”
 - The defendants claimed they were making a citizen’s arrest when they shot Arbery. The prosecution pointed out that the men did not know whether Arbery had committed a crime and had not seen him commit a crime.
 - GA citizen’s arrest law repealed in the aftermath of this case in May 2021: [HB 479](#) repeals the statute allowing for arrest by private persons.
 - Discussion of the problem of vigilantism, of armed citizens stepping into law enforcement role
 - Who was the initial aggressor?
 - GA self-defense law ([O.C.G.A. § 16-3-21](#) (a) and (b)):
 - Use of deadly force is justified “only if he or she reasonably believes that such force is necessary to prevent death or great bodily injury to himself or herself or a third person....”
 - Use of force is not justified if the person (1) “initially provokes the use of force against himself with the intent to use such force as an excuse to inflict bodily harm upon the assailant; (2) “is attempting to commit... a felony; or (3) “was the aggressor.... “
 - Prosecution made the argument that the defendants were the initial aggressors and therefore could not claim self-defense.
 - Race not a major factor in the prosecution’s case
 - As legal observers note, the prosecution did not center the case around racism as a motive but rather set up its case for jurors to come to its own conclusions about the McMichaels’ and Bryan’s motivation for killing Arbery.
 - The defendants’ racial animus did not play a major role in the state trial but did play a central role in the federal hate crimes trial. Social media postings and messages were introduced at the federal trial to show that the defendants’ acts were motivated by racial animus.

⁶ Eric Levenson, Brad Parks, and Carma Hassan, *Kyle Rittenhouse testifies he knew Joseph Rosenbaum was unarmed but acted in self-defense during data shooting*, CNN, (November 10, 2021), <https://www.cnn.com/2021/11/10/us/kyle-rittenhouse-trial-wednesday/index.html>.

- Federal hate crime trial
 - While the state trial was ongoing, federal prosecutors filed charges in federal court, including hate crime charges. In February 2022, the defendants were found guilty of hate crimes and attempted kidnapping, and the McMichaels were also found guilty of using firearms to commit a crime.
 - Plea negotiations and deals
 - The defendants reached a plea deal in early 2022 in which they would serve 30-year sentences in federal prison in exchange for guilty pleas.
 - Arbery's family opposed the plea deal, partly because the defendants would then serve their sentences in federal prison rather than Georgia state prison. When the family made their objections, the federal prosecutors released statements that they had consulted with the family and that the family had previously not opposed the deal. The judge rejected the plea agreement after the appeal from Arbery's family.⁷
 - Federal prosecutors typically consult with the victim's family in plea agreements. Prosecutors must act in the best interest of the public, and, at times, the state's interests may diverge from the interests of the victim's family. Though rare, judges can reject a plea deal if judge believes the agreement is not in the interest of justice.
 - Petit policy
 - [Internal Justice Department policy](#)
 - Federal prosecutors typically do not initiate prosecutions when a state is already prosecuting the defendants for the underlying acts. Under the petit policy, they may when: 1) when there is substantial federal interest, 2) the state prosecution has left that interest unvindicated, and 3) the government believes the defendant's conduct constitutes a federal offense and that there is sufficient evidence to sustain a conviction. The Assistant Attorney General must approve the prosecution. Substantial federal interests are generally those that are beyond the power of the states to enforce effectively. Dual state-federal prosecutions do not violate double jeopardy.
 - At the time of the Arbery's death, Georgia did not have hate crime laws. In 2020, Georgia passed its hate crime law [HB 426](#).
- Reforms at the state and local levels in policing as a response

⁷ Jonathan Allen, *In rare move, U.S. judge rejects plea agreement by Ahmaud Arbery's murderers*, REUTERS, (February 1, 2022), <https://www.reuters.com/world/us/us-prosecutors-reach-hate-crime-plea-deals-ahmaud-arbery-murder-court-filings-2022-01-31/>.

- In policing
 - Restricted chokeholds
 - Refined use of force standards
 - Duty to intervene
 - Duty to report excessive use of force
 - Data collection
 - Civilian input
 - Body cams
- In investing in social programs
 - Some cities have pledged to divert some resources from police funding and invest in programs for community programs like supportive housing, violence prevention, and mental health services.