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THE CURRENT: What's needed for police accountability after the killing of George Floyd?

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### PARTICIPANTS

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(MUSIC)

PITA: You're listening to The Current, part of the Brookings Podcast Network. I'm your host, Adrianna Pita.

In Minneapolis, Minnesota, the death of George Floyd, a 46-year-old Black man, was captured on video, showing one of the arresting officers kneeling on his neck while he pleaded for his life. After days of protests, that police officer, Derek Chavin, has now been taken into custody and charged with third degree murder and manslaughter. With us today to discuss what's happening in Minneapolis and about police violence more broadly is Rashawn Ray, David M. Rubenstein Fellow in Governance Studies here at Brookings. Rashawn, thanks so much for talking with us today.

RAY: Thank you for having me; I really appreciate you covering this important topic.

PITA: In the particulars of this case, there has been a lot of criticism about how long it always seems to take for police departments or district attorneys, for the mechanisms of law enforcement to start turning when the perpetrator seems to be current or former law enforcement. Can you talk about some of the difficulties and the regular actions that we're seeing in this regard?

RAY: Well, I think it's a couple of things. I think first, in the situation in Minneapolis, the length of time that it took for charges to be brought forth for the officer was actually speedy when it comes to law enforcement. So part of this, we need to put this in a continuum, that when we look at recent events and of course, people are linking this in a continuum of police brutality and police violence, to first, something that happened with Christian Cooper in Central Park, also, what happened to a Ahmaud Arbery in Georgia, and now obviously with George Floyd in Minneapolis, is that in all of these incidents, once there was evidence and once there was kind of a collection of political actors, a collection of people from the criminal justice side who got involved, it was actually fairly speedy to this point.

But the legal side of it is this, that in a lot of states and even there is some federal policies that exist, that gives police officers time to actually consult with the Fraternal Order of Police, to consult with a lawyer or hire a lawyer, and to actually act even at times, review evidence that already came in before they make official statements. This process delays the length of time that prosecutors typically want to bring forth charges. Prosecutors also know that the likelihood or the barometer for what we consider to be criminal conduct for police officers is extremely high. It's extremely high legally, it's also extremely high from the public's perception. The public, most people, just perceive that if a police officer did something, they were doing it for their protection or the greater good of society. So, the bar by which it takes to charge and convict police officers is higher than a regular citizen. And so prosecutors oftentimes take more time to ensure that their case is solid before they bring forth charges.

PITA: Got it. The officer in this case, this was not his first time being cited for overuse of force or other offenses. And that's another thing that very regularly seems to be the case. We often hear also sometimes, even when officers are either disciplined or even fired, that then the union takes steps to roll back those consequences. What are some of the factors impeding proper discipline and consequences for these bad actors?

RAY: That's a great question. So, the officer who killed George Floyd, who is now being charged with his murder, people say, based on reports that he is in been involved with about 18 police misconduct cases. He's been involved in officer involved shootings, he's been involved in cases that people will consider to be police brutality. And people have actually received civil payouts for what he's been involved in.

Now, what's important for people to recognize is that this is a pattern. This is a pattern. If we look at what happened to Tamir Rice in 2014 in Cleveland, if we look at what happened to Antwon Rose in Pittsburgh, the officers who killed both of those Black male teenagers had worked for previous law enforcement agencies as police officers and were dismissed. And typically in law enforcement, when you're dismissed, that means that instead of you being fired, the Fraternal Order Police is going to help you to resign peacefully and quietly. It then gives you give you the ability to go and work for another department. That's something from the legal and policy side that drastically needs to change. We might be seeing George Floyd walking around along with Tamir Rice and Antwon Rose if the officers who actually had previously committed misconduct and engaged in brutality, if they had not been allowed to work as law enforcement officers again.

The other part of this is this, that within police departments, when there is a complaint of misconduct, it goes to internal affairs. It goes up the chain, and if it gets to that point, it goes to what they call a trial board, typically involves about three officers, a captain, a major, someone else, who then make a decision about whether or not these officers have engaged in misconduct. And you have to do something extremely egregious to be fired. But there are different types of reprimand. People can be put on desk duty. People can be put on paid or unpaid leave. People can be fined and it's pro-rated throughout their check. The problem is that typically all of these actions are internal to policing. Rarely are they ever externally known until way after the incident has concluded and the decision is being concluded. So, what that means is that these civil payouts that people oftentimes talk about, like with the George Floyd killing, his family is going to receive a large civil payout. The unfortunate thing about these civil payouts is that the taxpayers' money from Minneapolis is going to pay for this. So, this means that George Floyd's family, their taxpayer money, is going to be used to pay them back for the death and unjustified killing of their loved one. And I think that is a process that should actually unnerve us all.

PITA: Absolutely. How and when does the civil rights division of the Department of Justice get involved in these sorts of cases and are they going to be involved in this one?

RAY: So it's unclear if the civil rights division is going to be involved. It's oftentimes two main ways in which they become involved. First, they have to actually be invited in. So if we look at the Imod arbitrary case with the with the McMichaels and Roddie, who with those three have been charged with his murder, the local agency, the prosecutor invited, and the state agency, the kind of Georgia bureau. And then from there, the federal agency was brought in to consider whether or not hate crime charges are appropriate. In Minneapolis, they have to be invited in or someone else has to enact it. So in this case from the White House, there has been some inquiries from the Federal Bureau of Investigation to investigate this further. Those processes will allow for oversight at the federal level to at least oversee what's happening with the case and then to make a determination if they want to come in or if they want to bring forth additional charges at the federal level. And we've seen this across the board. Let's take what happened with Dylann Roof in South Carolina, where he

murdered nine parishioners at Emanuel AME Church. At that point at the federal level, they came in to bring forth hate crime charges. And this is an important point, because even though it hasn't been necessarily shown that this is a hate crime with George Floyd -- I think most people realize that it is laced in racism -- but what we consider to be a hate crime is it is extremely high in the United State. And there are certain states that don't even have hate crime laws. So, in the state of Georgia, for example, they don't have hate crime laws. So, if hate crime charges are going to be brought forth, they have to be brought forth at the federal level because they don't have those particular statutes at the state level.

PITA: Can we also talk about the racism involved in police response to the protests? The protests in Minneapolis, protesters have been met with tear gas and rubber bullets. The protestors themselves have in some cases turned violent. The police precinct where the officers were based out of was burned down, I believe, or least set on fire. And there have been a lot of comparisons drawn to recent protests in Michigan, where heavily armed white protesters protesting the stay-at-home orders related to chronic virus took over the state capital with complete control by police. No shoving, no bullets, no tear gas. They just evacuated the legislators and let the protesters stand around and shout and have their say and have their due. And then that was it. Everybody packed up and went home. In protests over George Floyd's death, as with others over the years, for Eric Garner and Michael Brown and Freddie Gray and so many more, it seems inevitable that the police response is going to turn violent. Can you talk to us about that a little bit, please?

RAY: Yeah, I think you just highlighted it very well. Is that what people see when they look at the images of protest, whether they be anti-lockdown protest or protest against police brutality, is that oftentimes the racial composition of the crowds are different. And the way the law enforcement response to those crowds is laced in a racialized process that allows for one group to fully enact the First and Second Amendments and the other group to not do so. So with anti-lockdown protests, I have actually been doing research on this with Rebecca Shankman, who is an intern at Brookings, and what we've been finding is that anti-lockdown protesters have primarily been targeting states that have Democratic governors and they are more likely to bring forth right wing and racist propaganda. So, they had Nazi statements and symbolism. They are hanging effigies from nooses. They are highlighting these things that are laced in racism in ways that shouldn't necessarily align with some of the values that we consider to be American.

On the other hand, it's interesting how protests that oftentimes just tear up property because people will consider these protests, what happened in Minneapolis, to be violent because of the property damage. But from what I've heard, no one has really been injured. And I think I think it's important to make that distinction.

I think the other thing that's important to distinguish is that the crowd of Minneapolis, which is different from what we've seen, say in Ferguson and St. Louis and even what we see, say in Baltimore, is that the crowd in Minneapolis was quite racially diverse, much more racially diverse than other audiences. And I've studied these protests with some of my colleagues at the University of Maryland, Dana Fisher, and Dawn Dow, where we've looked at the variations in protest. And what we've found is that over time and over time, in the past couple of decades, that these types of protests have become more racially diverse. And I think that's because non-Black people are starting to see the level by which brutality is happening on Black bodies, that the over-criminalization of Black bodies is something that they don't appreciate. They don't appreciate people like Amy Cooper acting as if she's a damsel in distress in Central Park, playing up historical racial tropes that are older than the birth of our nation to actually try to criminalize Christian Cooper, knowing that when it comes to believability and culpability, that people are going to be more likely to be on her side. And I think people are recognizing that the incident that happened in Central Park is part of a continuum of oftentimes police violence, that is in what we see with George Floyd. I think the final thing and Dr.

Martin Luther King Jr., said this, one statement that always goes unnoticed from him -- there are several -- well, one of them is he always talked about how a protest is the voices of the unheard. And I think we have to recognize if we actually listen to, particularly Black teenagers -- I've seen a Black teenager in Minneapolis, I remember five years ago with the Baltimore uprisings after the death of Freddie Gray, that it was Black teenagers in Minneapolis, a boy in Baltimore, and a girl who were essentially saying, if you want this to change, you all have to change. And it's unfortunate that there has to be property damage for people to pay attention to us and pay attention to what we're trying to say.

PITA: The video of George Floyd's death is pretty horrible, and every time that one of these videos comes out, it seems like it's the worst one yet. And it seems like, all right, this should be the one that start catalyzing some changes. You know, we've just had to watch a fellow human being beg for their life from the people who are ostensibly supposed to be serving the community. Again. Many of the reforms that have been attempted in more recent years, like the use of body cams, those haven't had the effect that was hoped for. You hosted an event last fall with some law enforcement and some justice organizations where you talked about the kind of changes to culture and to practice that are necessary to see real change. Can you wrap us up here with some thoughts on what it will take to see some changes happen?

RAY: In policing, people always talk about bad apples. Well, bad apples come from rotten trees and the rotten trees in this regard are law enforcement agencies imbued with structural racism. And structural changes are desperately needed in law enforcement. And I think that we really have to focus on police accountability. And I think this starts with restructuring civilian payouts. And I think it is a couple, it's a few statistics that people need to know, and then I'll talk about this policy change.

What people have to realize is that Black people are three point five times more likely than whites to be killed by police when they are not attacking or when they have a weapon. That's an example of George Floyd. Black teenagers are 21 times more likely than white teenagers to be killed by police. That's Tamir Rice and Antwon Rose. A Black person is killed about every 40 hours in the United States. That's Jonathan Farrell or a Korryn Gaines. And then one out of every 1000 Black people are killed by police. We'll can think about Breonna Taylor in [Louisville]. And as sobering as these statistics are, they've actually improved in recent history. And so when we think about the changes that have been made, even since Rodney King: in-dash cameras in cars, body-worn cameras, and police bias trainings -- and I participated in all these different types of policy changes in the dozens of police departments and the Department of Homeland Security that I work with around the country. But they fall short of really being able to hold people accountable. And so, what happens currently is that typically an officer is not even charged, and even less than that an officer is convicted. Rarely does that happen. It happens very, very rarely. So I want people to bear in mind that the speed by which this has happened in Minneapolis, the fact that four officers were fired extremely quickly, the fact that charges have been brought forth very quickly, is a testament to change and it's a testament to really the Movement for Black Lives that's been going on for the past few years.

And so there were a couple of big solutions that we highlighted: first, officers who have been terminated due to police misconduct should not be able to work in law enforcement again. As I mentioned before, George Floyd, Tamir Rice, Antwon Rose, might all still be living had we had that policy in place. The big thing is we need to restructure civilian payouts. We need to shift civilian payouts away from taxpayer money and to police department insurance. We already have a model for this in health care. In health care, physicians have malpractice insurance. Hospitals have malpractice insurance. Mistakes happen all the time. And oftentimes that's what happens in law enforcement. There is a mistake. Someone went too far. Someone ran into someone with a car. There is some damage. Someone has to pay for it. Well, the city is typically on the hook for that. And

even though the city will cover the police department insurance policy, what this process allows to have happen is like in health care, when they get their new premium, every year, and it increases, they're going to know which police officers, similar to which physicians and hospitals, are costing them more money. This gives chiefs the ability to weed out bad apples so that these bad apples don't proliferate and continue to rot the trees of law enforcement agencies around the United States.

PITA: All right, Rashawn, thanks so much for walking through all of this with us. Hope you stay well and we'll look forward to having you on another time.

RAY: Thank you for having me.