Distinct truths What civil rights convictions in Ahmaud Arbery and George Floyd's deaths say about justice

BY MICHAEL MCAULIFFE

Guest Columnist

In the same week, lightning involving justice struck twice. Two federal prosecutions resulted in the swift convictions of six men — three police officers and three white men of a certain vintage — for violating the civil rights of separate victims in different regions of the country. Both federal cases were dual prosecutions charged in parallel to state criminal cases brought by local authorities.

The federal cases alleged that the actions of all six of the defendants violated the U.S. Constitution or federally protected activities, not just a criminal statute. They were handled by federal prosecutors specializing in such matters.

The cases found similar but distinct truths. The case in Minnesota charged the three officers with failure to keep George Floyd from harm because the defendants didn't intervene or take steps to ensure his physical safety, including seeking medical treatment. The jury found even the officer who was keeping the crowd at bay had a duty to help Floyd. The jury's verdict, after approximately 13 hours of deliberations, was notable not only because of its relative speed, but because of its unambiguous message assigning responsibility for protecting a person in custody to all the officers, not just the officer who had his knee on the victim's throat for nine minutes. The federal case in Minnesota was about having the affirmative duty to do something to help, not just a prohibition against inflicting harm. The state cases against the three officers remain to be tried.

Federal civil rights prosecutions of police officers are inherently difficult because the proof requirements go well beyond whether the defendant committed the act and involve determining whether the act is a crime at all. The case in Minnesota was never going to be easy in the sense that the defendants' roles were factually distinct from that of officer Derek Chauvin. In the end, however, the jury found a collective responsibility and in so doing, advanced the national discussion of what constitutes criminal police misconduct.

The Ahmaud Arbery federal civil rights case in Georgia was about one issue — race. Technically, the prosecutors also had to establish that the victim was engaging in a federally protected activity — here it was using a public street — but the activity seemed secondary to the question of why the defendants chased the victim and one of them shot him to death. The abundant, really overwhelming, evidence of racial hatred and bigoted beliefs had a significant impact.

The jurors returned the verdict in about four hours. That means there was little, if any, disagreement in the deliberations about the evidence. The defense counsel asserted their clients' racist beliefs and words were separate from their actions, as if one can divorce the hate from the harm. The jurors rejected that. The lesson in the federal Arbery case is clear: We are what we do and what we say is a good indicator of what motivates us.

These two cases reflect a change in America. The ability of separate juries to find guilt in a police misconduct case and a racially motivated murder in the same week is a sign that the process of accountability in the arena of civil rights enforcement is more assertive, more

public, than at any point in decades.

The sentencings for the six defendants remain to be determined by the judges in the two cases. The sentences well may be the place, especially in the police case, to distinguish the relative culpabilities of the defendants. For example, one of the officers convicted asked whether they should turn Floyd over on his side. That statement may have proved both an awareness of harm to Floyd and some measure of unease about what was happening. But concern alone isn't enough in America. Not any longer.

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From top, Travis McMichael, William "Roddie" Bryan and Gregory McMichael during their trial at the Glynn County Courthouse in Brunswick, Ga.

