

Acquittal of New York City police: court sanctions murder of Amadou Diallo

How the trial was rigged

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The not guilty verdicts announced February 25 in the police killing of Amadou Diallo were both outrageous and predictable.

The four cops—Sean Carroll, Edward McMellon, Kenneth Boss and Richard Murphy—had told the Albany, New York jury that Diallo's death was a tragic accident. Approaching him in plainclothes on his own Bronx doorstep, Sean Carroll thought—so he told the jury—that the wallet the West African immigrant had taken out of his pocket was a gun. He warned his partners, and the fusillade began.

The jury decided that no crime had been committed, not even manslaughter or criminally negligent homicide, in the killing of this unarmed man who had done nothing to provoke arrest, much less a shooting in which 41 bullets were fired. Clearly the very presence of Amadou Diallo on the street in a poor working class neighborhood was provocation enough to the police, members of the New York Police Department (NYPD) Street Crime Unit, whose job was to fill quotas for arrests and the confiscation of guns, and whose slogan was "We own the night."

The outrageous verdict was the product of careful preparations by the judicial system to ensure that the jury reached the "correct" decision. The stage was set when an appeals court panel ruled last December that the trial of the four officers had to be moved to Albany, 150 miles north of New York City. The judges said in their decision that the cops could not get a fair trial in the city. They perversely likened the Bronx to a "totalitarian society" because, they claimed, widespread anger at police brutality constituted impermissible pressure for a conviction in what would amount to a "show trial." This Orwellian statement

equated public outrage over government misconduct with its opposite, government suppression of democratic rights.

The change of venue was followed by the appointment of Judge Joseph Teresi to preside over the case in Albany. Teresi's actions during the trial were calculated to deliver to the jury a virtual mandate to acquit. After first ensuring that an integrated jury was selected so that the eventual outcome could not be challenged on the basis of racial discrimination, he repeatedly handed down rulings during the trial that strengthened the defense case. This culminated in his four-hour charge to the jury, in which he elaborated three separate legal justifications for the police. So determined was Teresi to exonerate the cops that he told the jury they could find them not guilty if they thought they were preventing a robbery, although there was absolutely no evidence to suggest this.

The judge's instructions to the jury on the justification of self-defense made it clear that whether or not Diallo posed any threat to the police was beside the point. They only had to conclude that the cops fired out of a subjective fear that he did, and that a "reasonable person" could share such a fear. He invited the 12 men and women to "put yourselves in the officers' shoes."

The effect of this legal theory was to wipe out any objective criteria for determining whether a homicide, or even manslaughter, had been committed. The cops said that Diallo's frantic attempt to get his wallet out of his pants pocket made them fear for their lives, and this was deemed sufficient to acquit them of any wrongdoing.

Just hours after the jury delivered its verdict, Judge Teresi, on his own initiative, visited the police officers'

attorneys at a bed-and-breakfast where they were staying, thanking them for their "cooperation" and assuring them they would be welcome back in his Albany court any time. He made no similar gesture toward either the prosecution or Diallo's parents.

The Bronx district attorney's office also played a key role in the outcome of the trial, by conducting a prosecution so half-hearted as to signal to the jury that it did not believe in its own case. The prosecutors allowed the defense to present the police version of the shooting and refused to conduct an aggressive cross-examination of the officers, each of whom took the witness stand.

The prosecution presented the driest and most abstract case imaginable, refusing until the summation to even ask the jurors to put themselves in the position of Diallo as he was confronted by four armed men, whom he may very well have taken to be muggers. Most damning was the prosecution's silence in response to the defense case. It refused to cross-examine the defense's final witness, a police expert who testified that the police were not guilty and had done nothing wrong. Nor did the prosecution seek to rebut any of the defense case.

The reason for the prosecution's behavior is not difficult to fathom. The defendants were not charged with sadistic acts clearly unrelated to any police investigation and impossible to whitewash on grounds of self-defense, such as the beating and sodomizing of Abner Louima in a Brooklyn stationhouse bathroom in 1997 or the choking death of Anthony Baez after his football hit a police cruiser in the Bronx in 1994.

The guilt of these four cops stemmed directly from the job they carried out as members of the Street Crime Unit. The top police brass, the administration of Mayor Rudolph Giuliani, and the rest of the political establishment could have been labeled unindicted co-conspirators in the killing of Diallo. The frenzied law-and-order campaign over the past decade, including the criminalization of the poor and the "racial profiling" of black and Hispanic youth and workers, is at the root of this murder.

The district attorney's office was not about to expose its own role and the system it represents. The result was a case in which the main witness was dead and his killers presented their side of the story with almost no opposition.



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