

Cops take stand to defend shooting of immigrant worker

Amadou Diallo murder trial drawing to a close

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After only three weeks, the trial of the four police officers accused in the killing of Amadou Diallo last year is moving rapidly toward its conclusion.

Sean Carroll, Edward McMellon, Kenneth Boss and Richard Murphy fired 41 times at the West African immigrant in the vestibule of his own apartment building in the Soundview section of the Bronx soon after midnight on February 4, 1999. The plain clothes cops, members of the Street Crime Unit that had become notorious in black and Hispanic neighborhoods for its "stop and frisk" policies, said they thought Diallo had a gun.

The death of the 22-year-old man, who had come to the US from his native Guinea and was working as a street peddler, sparked tremendous anger among working people and wide sections of the population. A grand jury indicted the police officers on second-degree murder charges, and their trial began on January 31, almost exactly a year after the killing. It is taking place in Albany, 150 miles north of New York City, following a ruling by the state appeals court that the police could not get a fair trial in any part of the city where the killing took place.

Jury selection took two days, with a panel of eight whites and four blacks selected. The prosecution took four days to present its case, and the defense rested on February 16 after five days. The prosecutors called a total of 12 witnesses, including eyewitnesses and the pathologist who performed the autopsy on Diallo's body. The key witnesses for the defense included the four defendants themselves, who took the stand in succession on February 14 and 15 to try to convince the jury that they were not guilty of murder even though they had gunned down an innocent man.

In a highly unusual development, the prosecution and defense made a joint recommendation to the court immediately after the end of the defense case to allow the jury to consider charges less serious than murder. A day later, Judge Joseph Teresi granted this request. In another unusual move, although not unprecedented, the prosecution offered no rebuttal to the defense testimony. The trial was then adjourned for nearly a week, until February 22, when closing arguments will be presented.

The lesser charges include first-degree and second-degree manslaughter as well as criminally negligent homicide. Second-degree murder, whether based on the conclusion that the officers intended to kill Diallo or that they acted with a "depraved indifference to human life" when they shot him, is punishable by a

minimum of 15 years to life and a maximum 25 years to life in prison.

The manslaughter convictions carry lesser penalties, including the possibility of no jail time. Second-degree manslaughter, meaning that they knew their actions put Diallo's life at risk but recklessly disregarded the risk, could leave the defendants with a minimum sentence of probation, or a maximum of 5 to 15 years behind bars.

Criminally negligent homicide, less serious than manslaughter, means the defendants are judged guilty of negligence in not knowing that there was a risk of killing Diallo. The maximum penalty on this charge is only 1 1/3 to 4 years in prison, and the minimum is probation.

The trial thus far, in addition to revealing many of the details of Diallo's death, has also displayed some of the workings of the judicial system and the role of the big business politicians.

The defendants' testimony was clearly designed to "humanize" them to the jury. The first to testify was Carroll, who choked up and broke down several times on the witness stand as he explained his role in the shooting.

Carroll said that Diallo had caught his attention because he kept looking up and down the street from the stoop of his building. He also supposedly fit the description of a serial rapist who had been stalking women in the neighborhood, although a later arrest indicated that there was almost no resemblance other than skin color.

"I'm trying to figure out what's going on, what this guy's up to," said Carroll about Diallo. Diallo would "peek out," than "slink back," according to the officer. When he and McMellon got out of their unmarked car and approached Diallo, he did not respond. He seemed to pull an object from his pocket, "and all I could see was the top slide of a black gun.... I just said, 'Gun. He's got a gun.'"

Carroll claimed he began firing when he thought McMellon had been shot. McMellon had fallen down while backing out of the building. When the shooting started the other two officers joined. Carroll and McMellon emptied their weapons, firing 16 shots each. Boss fired 5 shots and Murphy fired 4.

The prosecution and defense testimony have differed primarily on certain details. Although these matters do have a bearing on the fate of the defendants, there is little disagreement on most of the basic details.

The police claimed that they identified themselves to Diallo but that he did not respond to their request to speak to him, instead reaching into his pocket and taking out what later was revealed to be his wallet.

Carroll and McMellon each indicated in their testimony that they had called Diallo “Sir,” and asked if he would “please” speak with them. Any resident of New York City knows that is hardly likely. Moreover, two eyewitnesses who may have been close enough to hear voices testified that they did not hear the officers announce themselves as police or give Diallo any warning.

The defense also presented witnesses who claimed that the lighting in the vestibule was poor, thus buttressing the cops' claims that they feared for their lives because they thought Diallo was holding a gun. Diallo's landlord testified that the light above the front steps was off when he came out to the scene of the shooting about 30 minutes afterward. Prosecution witnesses, however, testified that this light was on at the time of the shooting.

Another issue raised was whether the police kept firing after Diallo had been brought down. Dr. Joseph Cohen, the pathologist in the New York City medical examiner's office who performed the autopsy, testified that the bullet that probably caused Diallo's death came early in the 19 shots that hit him. Cohen said at least one bullet hit Diallo while he was lying on the floor. Three neighbors of Diallo also told the jury that there had been a pause between two rounds of shots. The defense brought on two of its own expert pathologists who claimed that the bullet that killed Diallo came late among those that struck him.

While the verdict cannot be predicted, the direction in which this case is heading seems clear. The move to present lesser charges after the conclusion of all testimony suggests that powerful forces are working to bring the proceedings to a swift conclusion and to ensure that the defendants get off relatively lightly. The joint introduction of the motion for lesser charges and the decision by the prosecution not to rebut any of the defense testimony at all are both extremely unusual moves.

The prosecution even declined to cross-examine the last defense witness, Dr. James J. Fyfe. A professor of criminal justice and an authority on police techniques, Fyfe told the court that he usually testifies against police officers. He maintained that the killing of Diallo was a tragedy, not a crime. The prosecution's refusal to question him, along with its call for lesser charges, amounts to a decision by the authorities to drop any serious effort to convict the police on murder charges.

From a legal standpoint, it was fairly clear from the beginning of this case that it would be difficult to prove that the police were guilty of intentional murder. A second-degree murder conviction based upon “a depraved indifference to human life,” however, was definitely possible, but the prosecution has done very little to obtain it.

There are definite political reasons for this, and far more than the fate of the individual defendants is involved. The District Attorney's office would have had to show the role of the police in the terrorizing of poor neighborhoods and the history and role of the Street Crime Unit in particular behind this unprovoked killing. Needless to say, the prosecutors had no interest in doing so.

The political establishment and its judicial representatives want

to see this matter ended with relatively light penalties for the police. The moving of the trial from New York City to Albany was part of this effort. A “compromise” verdict will enable the authorities to claim that the legal system has worked, that police officers have been put on notice to exercise a bit more care as they go about their necessary jobs. At the same time, and much more significantly, such an outcome will serve to emphasize the necessity for public support of the forces of state repression, whose job is to defend the status quo and the rule of the wealthy.

The defendants in this case are probably far more typical of the police force as a whole than the sociopathic Justin Volpe, the New York City cop who was convicted last year of brutally assaulting Haitian immigrant Abner Louima and sentenced to 30 years in prison. The four officers in the Diallo case did not set out to kill their victim, and were undoubtedly shaken when they saw what they had done. At the same time, they were certainly indifferent to his fate. Their reaction was far more a reflection of what they feared would become of them.

The killing of Amadou Diallo was the product of the unprecedented social polarization in New York, the cutbacks and collapse of essential social services and the law-and-order crusade, complete with arrest quotas and a skyrocketing prison population. The police are trained and indoctrinated to regard working class communities as enemy territory and minority youth and workers as fair game. These were the circumstances under which they reacted, as the *World Socialist Web Site* explained last year immediately after the killing of Diallo, with “a combination of hostility and hatred of the working class, racism, indifference, fear and panic.” Indeed, the testimony of the police on the witness stand confirmed this.

As for the Democratic and Republican politicians, their role is summed up in the behavior of the presumed rivals in the upcoming New York Senatorial contest, New York City Mayor Rudolph Giuliani and Hillary Clinton. Giuliani has trumpeted his support of the police, portraying them as victims of an “anti-police” campaign which he has equated to racial and religious bigotry.

As for Mrs. Clinton, while posing as concerned over police brutality, she recently sent a long letter to New York's police union apologizing for using the word “murder” in connection to Amadou Diallo. Replying to the president of the Patrolmen's Benevolent Association, she said she “clearly misspoke” because “only a jury can decide [the police defendants'] guilt or innocence and I did not mean to suggest otherwise.” The Democratic candidate went on to salute “our brave men and women in law enforcement” and to attribute the drop in the crime rate to “the hard work of our officers who face tremendous risks every day.”



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