

Appeals court overturns New York police torture convictions

Bill Vann
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A federal appeals court on February 28 overturned the convictions of three out of the four cops found guilty in the 1997 stationhouse torture of Haitian immigrant Abner Louima. The stunning decision provoked outrage in New York City's minority and working class communities alongside claims of vindication from the police officers themselves and their union, the Patrolmen's Benevolent Association.

The decision has in no way, however, called into question the essential facts of the case, nor its broader social significance. The three-judge panel made it clear that it was offering no opinion on the guilt or innocence of the three police officers implicated in the savage assault carried out against Louima in the 70th Precinct stationhouse bathroom in Brooklyn in the early hours of August 9, 1997.

Earlier that night, Louima had challenged the authority of cops who had knocked a man to the ground and threatened to beat a pregnant woman while attempting to disperse a crowd outside a Haitian nightclub in Brooklyn's East Flatbush section. He was grabbed by the cops and beaten inside a patrol car before being taken to the stationhouse. Once there he was marched to the bathroom, his pants around his ankles in front of dozens of police officers. Inside the bathroom, Police Officer Justin Volpe took a broken piece of broomstick and rammed it into Louima's rectum, causing serious and permanent internal injuries.

Volpe pleaded guilty in the middle of a 1999 federal civil rights trial and was sentenced to 30 years in prison. His conviction was unaffected by last week's appeals court ruling.

Police Officer Charles Schwarz was convicted on charges of aiding in the assault by holding Louima down as Volpe sodomized him with a stick. Two other cops, Thomas Wiese and Thomas Bruder, were convicted together with Schwarz in a second trial held in 2000 on obstruction of justice charges for lying about the incident.

On this last charge, the appeals court found hyper-technical grounds for overturning the convictions. Essentially, it found that prosecutors had overreached by invoking a statute that applied narrowly to the crime of conspiring to obstruct or mislead a grand jury investigation. As there was no testimony at trial that the three cops had discussed imminent grand jury proceedings, the appeals panel ruled that there was insufficient evidence to sustain the guilty verdicts.

In doing so, however, the court made it clear that there was no doubt there was a conspiracy to cover up the hideous act of torture

in the 70th Precinct. "There is little need to recite in further detail all of the evidence that would have supported a jury finding that the appellants agreed to mislead both state and Federal investigators," the judges stated in their ruling. "If this had been the object of the conspiracy charged, we have no doubt that such a jury verdict would be upheld."

The appeals panel ruled, however, that lying to investigators was not the same thing as lying to a grand jury. In short, the cops were exonerated on the basis of a technicality. This is the kind of legal break which, in the exceedingly rare instance when it benefits the average victim of a police frame-up, provokes howls of outrage from the same law-and-order zealots who defended the Louima cops.

Wiese and Bruder will apparently face no further prosecution, and both have indicated they want to return to the NYPD. Bruder has brazenly made a demand for back pay and benefits covering the nearly two years since he was convicted. While his attorney attempted to portray him as a Good Samaritan who tried to aid Louima, Bruder was the cop who claimed he found a card for an all-male sex club in the Haitian immigrant's pocket but threw it away. This fabrication was tailored to support the infamous theory advanced by Volpe's lawyer during trial that Louima's grave injuries were the result not of his client's brutal sadism, but of an act of gay sex.

The most serious charge overturned by the ruling involves what is undoubtedly the murkiest issue in the Louima case: the identity of the second cop in the bathroom as Volpe carried out his attack. The court found that Schwarz was denied an adequate defense against the charge that he was the one because his attorney, Stephen Worth, refused to pursue the most obvious defense—implicating another cop.

Three cops in the 70th Precinct named Schwarz as the cop who led Louima down the corridor to the stationhouse bathroom where he was assaulted. Louima himself was unable, however, to identify Schwarz during the trial, and Volpe said that Wiese was in the bathroom with him when he attacked the Haitian immigrant, and that he did nothing to stop it.

Schwarz, Bruder and Wiese all claimed that it was Wiese and not Schwarz who escorted the prisoner to the bathroom. For his part, Wiese claimed that he sat outside the bathroom for several minutes playing with the stationhouse mascot, a dog named Midnight, while hearing sounds of a struggle. He told investigators he assumed Volpe was "tuning up," or beating, Louima. He said he

then walked in to find Volpe crouched over Louima with a stick in his hand and the prisoner lying on the floor with his naked buttocks exposed. He claimed he shouted out to the other cop, “What, are you crazy?” then picked Louima up off the floor and led him out.

Worth’s failure to implicate Wiese instead of his client, Charles Schwarz, the appeals court found, was rooted in a conflict of interest. The lawyer’s unsupported theory that Volpe had acted alone, with no one else entering the bathroom, was designed to aid the Patrolmen’s Benevolent Association, the court suggested. The union, which was being sued by Louima for promoting a cover-up of the crime, wanted the attack portrayed as the action of a lone, deranged cop, rather than a conspiracy involving other officers, including Officer Wiese, a PBA delegate.

Shortly after the cops were indicted, Worth and the attorney representing Bruder accepted a \$10 million retainer to serve as the PBA’s main legal firm, representing New York City cops in all cases involving criminal prosecution, administrative or disciplinary charges and civil lawsuits brought by people alleging police brutality.

The appeals court panel said that “implicating Wiese would have been ‘inherently in conflict’ with Worth’s loyalty to the PBA (and, thus, with his self-interest) and that Worth’s failure to pursue this strategy was almost certainly the result of this conflict.”

Fingering the other cop in the bathroom assault, the decision continued, “would have supported Louima’s claim in his civil case that he was assaulted both in the [patrol] car and in the bathroom by multiple officers in furtherance of a conspiracy. Casting Volpe as an aberrant officer who acted alone, on the other hand, would likely have been consistent with any defense advanced in the civil case.”

Rather than say it was Wiese, not Schwarz, in the bathroom, Worth advanced the lone-cop theory, asserting in his closing argument that Louima had conjured up a second officer in the bathroom in an attempt to “keep some shred of his dignity” after being sodomized with a stick. Describing the attack as “the most humiliating and degrading experience,” the lawyer added, “Even more humiliating is that one guy did it to you.” He argued the Haitian immigrant claimed that two cops assaulted him to make him look “less powerless.”

The late Judge Eugene Nickerson described the lone-cop defense as “fanciful,” while then-Chief Assistant US Attorney Loretta E. Lynch dismissed the argument as “the meanderings of Dr. Sigmund Worth.”

According to the three appeals judges, the weakness of this defense was compounded when a juror improperly informed other members of the jury of a news report that Volpe in his guilty plea had said there had been another cop in the bathroom. While Volpe had named Wiese, the jurors did not know that and assumed he meant Schwarz.

Prosecutors had objected to Worth’s representing Schwarz, charging that his contract with the PBA represented a clear-cut case of conflict of interest. Judge Nickerson warned the cop against keeping the attorney, but Schwarz waived his right to seek a new lawyer.

Whether Schwarz, who was sentenced to 15 years in prison, was

the second cop in the bathroom will undoubtedly be the key issue in a second prosecution, which prosecutors have said they are ready to begin. The cop is expected to be freed on bail this week.

Whatever the specific role played by Schwarz and Wiese in the assault on Louima, the assault was not merely a monstrous aberration involving a single crazed cop. A working class immigrant was tortured in a NYPD stationhouse with no one there reporting it or raising any objection, and Louima’s ordeal came to light only after a nurse treating him in a local hospital reported it to the media.

Cops at the precinct responded by throwing up a “Blue Wall of Silence.” Those who came forward did so only after it became clear that they too could be prosecuted. Literally dozens of officers could easily have been charged on the same grounds as Wiese and Bruder.

At the root of this sickening indifference to a vicious attack on a defenseless, handcuffed and unresisting individual lie the polarized class relations which exist in New York City. Central to this is the role played by the police in defending wealth and privilege while meting out repression against the most oppressed layers of the population. It is a measure of the extreme social polarization that continues to intensify in the “capital of capital” that such a crime could be tolerated and its victim seen as something less than human by those supposedly sworn to uphold the law.

The PBA objected to protests against the appeals court ruling as an attempt to “politicize” the decision. They warned against any actions that would tarnish the image of cops as heroes that has been so relentlessly promoted since 23 members of the NYPD perished in the collapse of the World Trade Center towers.

Ironically, however, the appeals court decision—hailed as a victory by the police union—has called attention to the fact that the essential class relations that gave rise to the Louima atrocity have not changed.

Indeed, in the wake of September 11, the NYPD has strengthened its repressive apparatus, hiring a former top Marine Corps General as a deputy commissioner for counterterrorism and an ex-head of the CIA’s Directorate of Operations as a deputy commissioner for intelligence. Meanwhile, the new administration of Mayor Michael Bloomberg has vowed to continue the “quality of life” enforcement campaigns pioneered under his predecessor, Rudolph Giuliani. These target mainly the poor for arrest on minor charges as a means of making the city’s streets palatable for the rich.

Under such conditions, the potential for another assault like that against Louima—or another incident like the 41-shot fusillade that felled Amadou Diallo, or the killing of Patrick Dorismond for rebuffing a plainclothes investigator’s demand for drugs—remains ever-present.



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