Police killing in Oakland, California

The Oscar Grant verdict: some political lessons

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The July 8 jury verdict of involuntary manslaughter (accidental killing) for police officer Johannes Mehserle is a travesty of justice.

On New Year's Day 2009, Mehserle shot Oscar Grant—a 22-year-old Oakland, California, man—in the back as he lay face down and prone in front of him. Transit riders videoed the incident, which was later broadcast on YouTube. The killing provoked immediate outrage and has fueled protests in Oakland, California, since it occurred.

If their roles had been reversed—and a video had revealed a black, working class youth shooting an officer in the back as he lay face down on the ground, later claiming it was an accident—the entire apparatus of the justice system would have been mobilized to ensure the harshest sentence: death, if possible.

This verdict and Mehserle's relatively light sentencing exposure—the judge can now set the cop free with a grant of probation and no prison time—is proof that workers and the poor cannot expect justice in bourgeois criminal courts.

Invaluable lessons can also be drawn from what happened in the aftermath of the trial. From the moment the verdict was announced, local media covered the widespread opposition as though violence were inevitable and mere attendance at the protest a criminally suspicious act. Simultaneously, Oakland police initiated "Operation Verdict": a mobilization of hundreds of armed officers in riot gear, helicopters, and squad cars.

Despite lurid media descriptions of "rioting" and "violence," the protesters were largely non-violent, as they have been at every other rally against the police murder of Oscar Grant over the last year and a half. Self-styled anarchists and others did commit some acts of vandalism to a number of banks and local businesses.

By far the most dangerous and aggressive element at the Oakland protest July 8 was the police. On arrival, they exhibited indifference to protestors' personal safety and open hostility to their basic rights. Protestors denounced police for pushing, kicking and hitting them; one woman was struck by a police car.

At dusk, the police provocation worsened. The cops encircled the crowd, setting up a line at 12th and Broadway in downtown Oakland and sealing off surrounding intersections. They slowly tightened this circle, squeezing the mass of people into a disproportionately small area, prompting both anxiety and angry responses. Once the ring could get no tighter the police declared the crowd an unlawful assembly and began making arrests.

Between 80 to 100 people were arrested, but only nine were later charged, proof that most of the arrests were arbitrary, meant primarily to intimidate popular opposition to the verdict. However, the authorities clearly intend to send a message wherever they feel they have a case. Alameda County prosecutor Bob Hartman said on Monday that seven individuals were charged with felonies, which would expose them to at least three years in prison.

A local television station, KRON 4, covered the event around the clock as though it were a sporting match, rooting for the police and slandering the protestors until the wee hours. Commentators goaded their on-the-scene reporters to reiterate their fear of the quasi-criminal protestors and at several points seemed to be goading police to violence by repeatedly expressing shock at how "rioters" could be allowed to vandalize property. Although this backfired in an unscripted moment when one of their reporters said he did indeed feel fear…that the police were going to arrest him too!

Via Twitter one observer noted: "Thankfully, most of the protesters today were peaceful. With only a few inciting violence. And they all worked at @kron4news." Nonetheless, KRON 4 provided the "official" coverage and received the highest ratings that evening, which aided the innumerable distortions in the national and international media. The attitude of KRON 4 was virtually indistinguishable from that of the police spokesman who repeatedly characterized the protest as a near riot that had to be shut down before it began.

Once again Oakland's Democratic Party Mayor Ron Dellums played a particularly shameful role in slandering the protest. Dellums, the longtime hero of the middle class left, attempted to provide the police and media propaganda campaign with a certain "left" credibility. In a live feed from KRON4 news, Dellums begged the peaceful protestors not to hurt anyone, repeatedly pleading with them to go home, as though he were negotiating the release of hostages.

Dellums' political trajectory is typical of California's ex-radical milieu. Elected to the US House of Representatives in 1970, Dellums has spent most of his political life in Washington, DC, where he developed close relations with the corporate and political elite. Describing himself as a "socialist," Dellums has long cultivated a left image, lending his name to one protest campaign after another. Meanwhile he has cashed in as a corporate lobbyist for such companies as pharmaceutical giant Bristol Myers Squibb through his firm Dellums, Brauer, Halterman & Associates, also located in downtown Oakland.

On Monday, Dellums announced that 80 Oakland police officers would be laid off due to the budget crisis. He had deliberately postponed the decision to bolster "Operation Verdict," according to KRON 4 news. The same day it was announced that Mehserle's sentencing would be postponed until November at the request of his attorney.

The aggressive and well-coordinated efforts of media, police and local politicians to slander protesters seeking to do nothing more than exercise their First Amendment rights to free speech and association stand as a warning to workers and a testament to the growing fear of social unrest in ruling circles.

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No justice for working class victims of police abuse

Although it is highly unusual that Mehserle was even charged, jailed and put on trial for a line-of-duty shooting, the outcome attests to how easily criminal procedure and even jury trials can be manipulated to produce a desired outcome for the state.

The video evidence of murder was so obvious that Alameda County District Attorney Tom Orloff, who charged Mehserle, stated publicly, "What I feel the evidence indicates is an unlawful killing done by an intentional act, and from the evidence we have there's nothing that would mitigate that to something lower than a murder." A preliminary hearing was held in Oakland last year and, after seven days of testimony, Alameda County Judge C. Don Clay concluded, "There's no doubt in my mind that Mr. Mehserle intended to shoot Oscar Grant with a gun and not a Taser."

Following this, Mehserle's attorney Michael Reins—who previously represented a group of corrupt Oakland police officers dubbed "the riders," found to have routinely beaten citizens and filed false crime reports—was anxious to move the case out of Oakland. He vigorously argued for and won a motion to transfer the case to Los Angeles County.

Los Angeles County Judge Robert J. Perry was then handpicked by Chief Justice of the California Supreme Court Republican Ronald George—a notorious conservative on issues of criminal justice appointed by former Republican Governor Pete Wilson—to hear the murder trial. Perry, a right-wing Republican, was also appointed by Wilson after more than a decade as a federal prosecutor. In 2001 Perry ordered the early release of corrupt LAPD officer Rafael Perez—the central figure in the notorious "Ramparts" scandal, which uncovered a vast culture of systemic police abuse, theft and murder in Los Angeles.

Once on the job, Judge Perry made a number of rulings substantially bolstering Mehserle's claim that the shooting of Grant was an accident.

He allowed well-paid defense witnesses, presented as "experts" to the jury, to provide unnecessary and misleading testimony over the objection of prosecutor David Stein. One such expert, retired police Captain Greg Meyer, has made a career of putting his seal of approval on acts of police abuse, even testifying in support of one of the officers acquitted for beating Rodney King. He was allowed to tell jurors that, "Mehserle's hand motions were consistent with hand motions used in a Taser draw."

Another such expert for Mehserle, Michael Schott, was permitted to give testimony clearly contradicting the powerful video evidence in a number of ways. The prosecution argued that Schott's interpretation of the video was inadmissible at trial because jurors could see for themselves, but Judge Perry allowed it, describing the witness's presentation as "quite helpful."

Two Alameda County judges barred the same so-called expert testimony from Mehserle's preliminary hearing.

Judge Perry also decided that a 2006 arrest of Grant—a routine traffic stop that resulted in the young man being shocked with a Taser stun gun—could be presented to jurors as evidence of the dead man's "character trait" for resisting arrest. This became a critical component of the defense effort to assassinate the character of Grant and his friends. "It's certainly our view that it is more prejudicial than probative," the prosecution argued. Perry then prohibited the use of Mehserle's refusal to speak to BART police investigators about the shooting as evidence of a guilty mind, again aiding the defense.

Finally, Perry decided he would not even let the jury decide on the most serious possible charge against Mehserle, first-degree murder, because there was supposedly too little evidence of premeditation. However, California law states that premeditation does not require deliberation, or the passage of any particular period of time before the crime. By this standard, there was ample evidence of premeditation. Again, if the roles of the two men had been reversed and a cop had been shot, it is unthinkable that any judge would have made a ruling reducing the defendant's minimum exposure from 25 to 15 years.

Generally, a jury looks to the judge for guidance, and a veteran fixer like Perry would have had numerous opportunities to influence the jury with his opinions on the evidence. The *San Francisco Chronicle* cited one example: before deliberations, Perry told the jurors that Mehserle looked shocked after pulling the trigger—an important inference to be made by the jury, not the judge—later presenting alternate reasons for the shock he proclaimed was evident in the video.

Juror confusion can be seen clearly in the inconsistent verdict. The jury apparently agreed that Mehserle believed he was holding his Taser and that the shooting was an accident. This count exposes Mehserle to a maximum of 4 years state prison and a minimum of no prison time at all. However, it also found him guilty of intentional use of a firearm in the commission of a felony, exposing him to an additional 5-10 years in prison for a violent offense. It is the job of the judge to prevent such legal confusion. The fact that Perry accepted the contradictory verdict is highly unusual. Legal experts are now predicting that he will simply toss out the guilty verdict on the gun charge on the grounds that it is not applicable to the conviction.

Although prosecutor Stein performed competently, he made some significant omissions suggesting a possible conflict of interest inherent in the close relationship between police and prosecution. For instance, he did not seek to present to the jury the testimony of a 41-year-old black man, Kenneth Carrethers, who had been hospitalized for face and chest injuries after being arrested by Mehserle and four other police officers only six weeks before Oscar Grant was murdered.

Moreover, there has been legitimate anger over the fact that not one of the jurors was black. Mehserle's attorney succeeded in keeping black jurors off the panel, removing the three remaining potential black jurors with peremptory challenges. Although those challenges require no justification or explanation, they may not be used to systematically exclude jurors because of membership in an identifiable group. Nonetheless, the prosecution did not exercise its right to motion the court to review the challenges.

The Grant case is a significant political and social episode. In the face of overwhelming evidence, the powers that be made use of the court system and the legal process to ensure that one of its agents, guilty of murder, received a relatively light sentence.

The operations of the legal system are bound up with the day-to-day interests of the ruling elite. Over the past 30 years, under conditions of the decline in the world position of American capitalism and the widening of the social chasm in the US, both parties of big business and the courts have moved sharply to the right. Basic democratic rights—freedom of speech and association, the right to vote, the right to assemble and protest, elementary legal protections—have come under relentless attacks, while the power of the state, through its courts and police, has been enormously strengthened.

California and its major cities, such as Oakland and Los Angeles, are among the epicenters of this process in the US. Law enforcement officials enjoy unprecedented power to harass, abuse, beat and even kill working and poor citizens throughout the state. For millions the murder of Oscar Grant has become symbolic of this reality, while the relatively light consequences for his killer stand in stark contrast to those routinely meted out to non-violent and petty criminals.

Grant's uncle, Cephus Johnson, expressed this sentiment saying, "We knew from the beginning that we were at war with the system.... We have been slapped in the face by this system that has denied us true justice."

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