

Talking Points on the Amadou Diallo Trial
POC: Myron Marlin 616-2777
(For when there is a verdict)

- The shooting of Amadou Diallo was a very tragic incident that captured the attention of the entire nation.
- Following the shooting, the U.S. Attorneys office in Manhattan, together with the Civil Rights Division in Washington, opened an investigation into the incident. In addition, the FBI assisted the local investigators.
- Over the past few weeks, we have been actively monitoring the state case. And now, with the trial concluded, we will review the information that was developed during the state case and determine what, if any, federal action is warranted.
- In addition to the Diallo investigation, the Civil Rights Division, and the U.S. Attorneys offices in Manhattan and Brooklyn, are working together to conduct a joint investigation into certain alleged patterns and practices of the NYPD. The investigation is being conducted under a provision of the federal Crime Bill, which allows the Department to investigate law enforcement agencies that engage in misconduct -- and enables the Department to get the agencies to change their practices.
- The inquiry began in 1997 following the Abner Louima assault. At that time, the investigation sought to determine whether incidents of excessive force were the product of systemic deficiencies in the NYPD. For instance, it was focusing on the way the NYPD responded to the use of excessive force by police officers.
- In the wake of the shooting death of Diallo, the Justice Department expanded its investigation of the NYPD to include an examination of the NYPD Street Crimes Unit. That investigation is continuing.

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To: Irene Bueno/OPD/EOP@EOP

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Subject:

Police Brutality

Q: Recently, there have been a number of stories on police brutality and misconduct, and a lack of citizen trust in law enforcement. What does the Administration propose to do about this?

A: Our criminal justice system must be fair and have the support of all law-abiding Americans. To this end, this Administration will continue to vigorously enforce our civil rights laws against police and others in the criminal justice system who are guilty of breaking our laws. Public servants, just like private entities, must be held accountable if they are guilty of abuse or discrimination.

But improving fairness in our criminal justice system cannot rest solely on prosecutions once laws have already been broken and the damage is done. We must be proactive to ensure that our criminal justice system is serving the public safety needs of all Americans. That is why we have proposed in our 21st Century Policing initiative, new funds for integrity and ethics training, police scholarships to promote the best educated police force possible, and funds to improve minority recruitment to do more the ensure that police departments the communities they serve. We must strengthen the bond between law enforcement and communities; such trust is essential if we are to move forward to make our criminal justice system more responsive and fairer for all of our citizens.


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Officers acquitted on all charges in Diallo shooting trial

February 25, 2000

Web posted at: 5:02 p.m. EST (2202 GMT)

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ALBANY, New York (CNN) -- Jurors acquitted four white New York City police officers of all charges on Friday in the death of Amadou Diallo, an unarmed black man who was hit by 19 of 41 shots fired at him in the vestibule of his Bronx home last February.

The defendants -- Kenneth Boss, Sean Carroll, Edward McMellon and Richard Murphy -- had all pleaded not guilty to the charge of second-degree murder in the 1999 killing of Diallo, a 22-year-old immigrant from the West African nation of Guinea.

Jurors also were allowed to consider lesser charges, including first-degree manslaughter, criminally negligent homicide, and reckless endangerment.

Juror dismissed

Jurors, who were not sequestered until deliberations began, were instructed every day by State Supreme Court Justice Joseph Teresi not to discuss the trial outside the jury room.

Just before deliberations began Wednesday, Teresi said he dismissed a white woman juror and replaced her with an alternate, a white man, after an investigation by state police revealed she had talked about the case outside the courtroom.

The judge said the dismissed juror apologized for her actions, saying if she had it to do over again, she would not have talked about the case. The judge described the woman as "very embarrassed" about it.

The re-configured jury consisted of four black women, one white woman and seven white men.

The accused:

All four defendants pleaded innocent to second-degree murder:

- Kenneth Boss, 28 -- fired 5 shots
- Sean Carroll, 37 -- fired 16 shots
- Edward McMellon, 27 -- fired 16 shots
- Richard Murphy, 27 -- fired 4 shots

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women, one white woman and seven white men.

The trial was moved from the New York City borough of the Bronx to Albany, New York -- 150 miles away -- because of intensive pretrial publicity.

Closing arguments

Defense attorneys said in closing arguments Tuesday that jurors should appreciate the fear of the officers the night they shot Diallo, as they faced someone they thought was a dangerous man.

"They made a mistake," John Patten, attorney for officer Carroll said. "But they honestly believed this guy was shooting at them."

Diallo was struck by 19 of 41 bullets fired at him by the defendants on February 4, 1999.

Eric Warner of the Bronx District Attorney's office asked jurors to put themselves into Diallo's shoes, describing what he said the immigrant must have felt as he was approached by the four white police officers.

"There wasn't a hint of justification. Who wouldn't be afraid, faced with four big men with guns?" he said.

But defense lawyers told jurors that the prosecution had failed to prove beyond a reasonable doubt that the four officers were not justified in firing their weapons at Diallo as he stood in the vestibule of his apartment building.

Officers: Diallo was 'acting suspiciously'

The officers had testified that Diallo was acting suspiciously and did not respond to their commands when they approached him. Defense lawyers said an object Diallo pulled out of his pocket was perceived to be a gun. Diallo did not have a criminal record and the object the officers saw in his right hand was actually a wallet.

Murphy's attorney, James Culleton, said the officers followed police procedure when they stopped to question Diallo.

"On February 4, 1999, these four police officers, they didn't know who Mr. Diallo was. They didn't know he lived in that building," Culleton said. "And they had an obligation, following proper police procedure, to stop, to walk up to Mr. Diallo and ask, 'Who are you?' and 'Why are you in this area?'"

The charges/penalties:

Although charged with second-degree murder, the officers also faced possible conviction for the lesser charges of first-degree manslaughter or criminally negligent homicide and reckless endangerment of bystanders.

The possible penalties ranged from probation to a maximum of 25 years in prison.

"Why Mr. Diallo acted the way he did to this simple request to talk, we'll never know," Culleton added.

Prosecution: Diallo was 'doomed from the start'

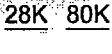
Warner told jurors that Diallo "was being looked at in a way that had him doomed from the start."

Defense attorney Steven Brounstein told the jury that his client, Boss, believed Diallo had a gun and was firing at fellow officers Carroll and McMellon. He said prosecutors had offered "not one scintilla of proof" otherwise.

The facts that Diallo was at home and did not have a gun were "Monday morning quarterbacking arguments" offered by prosecutors desperate to prove their case, Brounstein said.

Brounstein also referred to the prosecution's "mantra of 41 bullets," and said, "Ken Boss did not fire 41 shots. He fired his gun five times. He perceived a threat based on

CNN's Maria Hinojosa sums up Tuesday's closing arguments.

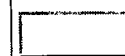
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Boss did not fire 41 shots. He fired his gun five times. He perceived a threat based on what he heard, what he observed. ... This is not a case of 41 shots."

Patten argued that with bullets ricocheting around the vestibule in the Bronx where Diallo died, the defendants thought they were in a firefight. The officers "were wrong," he said. "They made a mistake. But they honestly believed this guy was shooting at them."

Added Culleton: "You know about the chaos that was going on, you know why two officers fired 16 shots, one fired five and my client four," he told the jury. "A series of events escalated and what we are left with is a terrible tragedy that everyone feels sorry for, but no crime was committed."



James Culleton, right, defense attorney for New York City police officer Richard Murphy, addresses the jury during closing arguments

But Diallo's neighbors testified that they did not hear officers' voices before sporadic gunfire erupted. And the coroner who performed Diallo's autopsy told jurors that wounds showed he was either falling or flat on his back when most of the rounds hit.

Correspondent Maria Hinojosa, *The Associated Press* and *Reuters* contributed to this report.

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Hurdles Seen for U.S. Role In Diallo Shooting Case

By JANE FRITSCH

Federal prosecutors may have difficulty bringing civil rights charges against the four New York City police officers who were acquitted in the death of Amadou Diallo, legal experts say, but they will be working under Justice Department guidelines written broadly enough to allow them to file a case if they want to.

The guidelines have three requirements: that the case involve "a substantial federal interest," that the original trial left that interest "unvindicated" and that there is strong enough evidence to win a conviction.

The arguments against a federal case are strong, the experts said, but not impossible under those terms. And lawyers for Mr. Diallo's parents said they would go to Washington for a meeting on Thursday armed with a briefcase full of arguments intended to persuade Justice Department officials to pursue the case.

"I think there are compelling reasons to do so," said Anthony H. Gair, who represents Mr. Diallo's mother, Kadiatou. A civil rights prosecution could delve into issues of racial profiling, using the officers' own testimony against them, he said. And the prosecution of the case by the Bronx district attorney's office was flawed, ineffective and incompetent, he said, also a reason for the federal government to step in, as it did in the case of the Los Angeles police officers who were acquitted in a state court of beating Rodney G. King.

The visit is also intended to bring political pressure to bear. The Rev. Al Sharpton, who has been leading demonstrations against the Police Department, and Representative Charles B. Rangel of Harlem, the dean of New York's Congressional delegation, are to attend the session with Deputy Attorney General Eric H. Holder, the second-ranking official in the Justice Department.

If federal charges are filed, it would be under a Reconstruction-era law that makes it a crime for anyone acting under "color of law" — like a police officer or state official — to willfully deprive a person of a right protected by the Constitution. The law was aimed at white officials in southern states who might refuse to prosecute people for crimes against former slaves or might arrest former slaves on frivolous pretexts.

But one word in the law — willfully — could be the biggest hurdle prosecutors would face in bringing charges in the Diallo shooting.

"Intent is crucial," said Sheldon Nahmod, a professor at the Chicago-Kent School of Law who has written extensively on civil rights law. "It's not enough for the criminal prosecutors to show that they may have violated Mr. Diallo's rights," Mr. Nahmod said. "What's also required is that they have done so willfully."

It is not enough, he said, to show that the officers acted recklessly or should have known that Mr. Diallo was doing nothing wrong. "What has to be proved is that the police officers knew that there was not proba-

ble cause to arrest," Mr. Nahmod said.

Mr. Diallo, an immigrant from Guinea in West Africa, was standing, unarmed, in the lobby of his apartment building a year ago when the four officers fired 41 shots at him, hitting him 19 times. At their trial, they testified that they thought he had pulled a gun out of his pocket. It turned out to be a wallet.

"You're really going to have to get inside these officers' heads," said Laurie L. Levinson, a professor at the Loyola Law School in Los Angeles. "These guys could be the worst cops in the world, but if this was just a terrible mistake instead of willful misconduct, then it's not a federal crime."

Prosecutors would have to show that the officers intentionally committed acts that another officer in the same circumstances would have thought unreasonable, she said, adding, "This is a very tough standard."

In the King case, she said, federal prosecutors were able to demonstrate willfulness with both the videotape of the beating and evidence uncovered after the state trial

One word in the law could be the biggest obstacle.

that showed the officers had laughed and joked about the beating.

Because rioting broke out after the verdict in the first King trial, there was a "very strong showing" of a federal interest, Ms. Levinson said.

The federal interest in the Diallo case is less obvious, but could simply be the protection of Mr. Diallo's 14th Amendment right against the taking of his life without due process, the lawyers said.

Demonstrating that the federal interest was not "vindicated" at the trial last month is another difficult hurdle.

Mr. Gair, Mrs. Diallo's lawyer, said there were several serious prosecution mistakes that could meet that Justice Department requirement. One, he said, is the failure to argue strongly enough against the change of venue from the Bronx to Albany. Another is the failure to cross-examine an expert witness called by the defense to testify about proper police procedure, he said.

But William Van Alstyne, a professor at the Duke University Law School, said there must be a showing that the prosecutors were grossly incompetent — that they came to court drunk or did not show up at all. "Even if they were less than brilliantly competent," he said, that is insufficient reason to find that the federal interest was not served.