

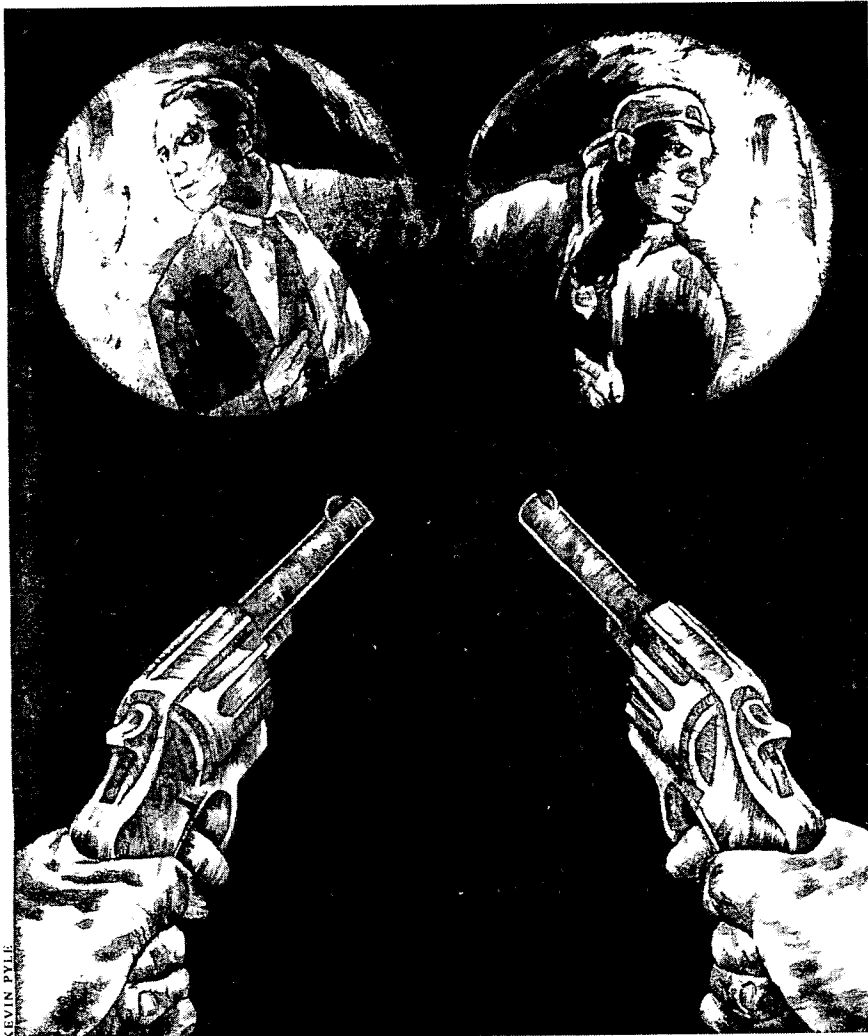
PODIUM

Change police perception

By *Harvey A. Silverglate* SPECIAL TO THE NATIONAL LAW JOURNAL

A STUTE observers of the recent trial of four New York police officers charged with murdering Amadou Diallo—who was gunned down in a fusillade of 41 bullets in the vestibule of the Bronx apartment building where he lived—realized that an acquittal was likely as soon as Judge Joseph C. Teresi delivered one particular set of jury instructions. These covered when a police officer may use deadly force without incurring criminal liability, even if, in retrospect, that use of force resulted in the tragic death of an innocent citizen.

Madison Shockley, of the Southern Christian Leadership Conference, wrote in the Feb. 29 issue of the *Los Angeles Times* that the real problem was not that the police officers' killing of an unarmed black man in his own



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was wrong, but rather that such action, under the circumstances of the case, was legally right. The fault lay, Mr. Shockley suggested, in the deadly force law that made the killing justifiable homicide.

Mr. Shockley may be correct—that the acquittals resulted from the wide latitude the law gives police officers when they perceive danger—but it hardly follows that a change in the law would have made much difference. Jurors, except those so imbued by racial politics that they are incapable of judging a police officer of another race fairly, are likely to give the officer the benefit of the doubt almost every time, where there is some reasonable, or at least plausible, basis for believing that the officer honestly felt him- or herself to be in peril as a result of a suspicious-seeming sudden movement at a time or place that whispered (or screamed) danger.

The problem becomes a more urgent one when there is reason to believe—as in the *Diallo* case—that the perceptions of danger, although genuine, were heavily influenced by race. Although there is no justifica-

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tion for “racial profiling”—the perception that citizens of color are more likely to be engaged in crime—by highway patrol officers (the infamous race-based stops on the New Jersey Turnpike come to mind), the situation is far more complex in nighttime street encounters in high-crime neighborhoods.

Race and reality

Such racial suspicions, some will claim, have no basis in reality, while others will assert that they are an unavoidable fact of life. It is not the truth that will, in the end, count but, rather, whether 12 conscientious jurors will convict a police officer beyond a reasonable doubt when the officer appears to have acted out of a sincere, even if wrong-headed, judgment.

Hence, preventing future tragedies like the *Diallo* case likely involves less legislative change in the law of justifiable use of deadly force and more efforts to change the culture in big-city police departments.

Racial profiling and its results—ranging from unfair harassment of citizens of color to the tragic killing of innocent citizens—need to be the subject of more candid discourse.

Most of the noise is heard from one end of the spectrum (big-city mayors for whom the police can do no wrong) or the

other (racial hucksters who, for example, protest moving a trial from New York to Albany because of threats of riot and mayhem provoked by those very hucksters, as happened in the *Diallo* case).

Much can be done. Officers can be put into uniform, reducing the risk that a black man stopped by four armed white men in street clothes will feel he is about to be robbed or assaulted. (Mr. Diallo, in reaching for his wallet that the officers perceived as a gun, may have been turning his money over to what he thought were robbers.)

Race probably aided those misperceptions on both sides. Racial profiling, when the officer's fear for his or her safety is clearly not involved, should be punished severely, and independent civilian review should control this process. Street patrol officers should get to know their neighborhoods well, and vice versa. More thought should be given to the use of weapons that stun rather than kill.

However, we cannot prevent tragedies like the killing of Amadou Diallo by trying to force jurors, by legislative fiat, to convict police officers who can genuinely convince 12 of their fellow citizens that they acted out of genuine fear for their own safety while performing their duty to protect the public. **NLJ**

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