

Comment

Badge of Cowardice

A prominent police advocate did one bad job defending one brutal cop

**By RICHARD ZITRIN
and CAROL M. LANGFORD**

Two weeks ago, former New York City police officer Justin Volpe confessed to horrific crimes against Abner Louima, admitting he grossly abused his authority as an officer by taking a broom handle and ramming it up the helpless Louima's rectum. Until he admitted guilt suddenly in the midst of trial, Volpe and his lawyer, Marvyn Kornberg, claimed these events had never happened, apparently relying on the N.Y.P.D.'s "blue wall of silence" for protection. But police witness after police witness testified against Volpe, who finally confessed when the verdict appeared all but certain.

Lost in Volpe's confession is the startling behavior of Volpe's lawyer, Kornberg. Kornberg is well-known for his defense of accused police officers. But in his defense of Volpe, Kornberg struck out.

First, Kornberg failed to recognize the strength of the prosecution's case until

weeks into trial, when any mercy his client might have received from an early guilty plea had evaporated in a stream of denials by the officer and accusations against the victim. The extent of what some of the police witnesses said may have come as a surprise to Kornberg. But if he had done his homework — both in discovery and independent investigation — he would have seen at least most of it coming long before

the witnesses took the stand.

Second, Kornberg excoriated Louima both in front of the jury and in the press, declaring in his opening statement that Louima's injuries were "not, I repeat not, consistent with a nonconsensual insertion of an object into his rectum." He then promised the jury more than one expert to prove this very point. The Rev. Al Sharpton, who doesn't always get things right,

did this time when he called this defense theory a "second rape."

HARMFUL CROSS

Kornberg's accusatory cross-examination of Louima did still more harm, however. Defense lawyers, of course, often "try the victim," particularly where there's no other real defense. But in a case like this, with its important racial and political overtones, prudent defenders choose their course very carefully. By coming on strong to Louima, Kornberg managed both to make the victim more sympathetic and to dig a deeper hole for his own client once the prosecution broke through the wall of silence to produce corroborating testimony.

Kornberg's third strike was his effort to distance himself from Volpe's plea. He announced in his press conference after the disclosure of the guilty plea that "I don't make decisions for clients to plead guilty." This seeming effort to make the plea sound like it was all Volpe's idea looks from here to be an attempt to protect Kornberg's future law practice defending rogue cops rather than his client's future sentence.

It's a little late — and far too convenient — for Kornberg to distance himself from Volpe only after the truth has been reluctantly admitted. Do we really believe Volpe made this decision entirely on his own? Even if he did, this is hardly the time for Kornberg to abandon his client. His opportunity to distance himself from Volpe ended when he agreed to take the

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FACING THE MUSIC: Marvyn Kornberg (behind microphones) meets the press early in his defense of former New York City police officer Justin Volpe. On May 25, Volpe (left) pled guilty to sexually assaulting Haitian immigrant Abner Louima after a 1997 arrest.

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case. From the moment he signed on, Kornberg became responsible to stay the course as Volpe's defender. If he didn't want to risk accepting all the responsibilities of defending a man who had so brutally violated Louima, Kornberg should have thought twice about accepting Volpe as a client in the first place.

Now Kornberg must explain to Judge Eugene Nickerson why Volpe deserves less than a life sentence. Kornberg doesn't seem to relish this role, but he's more important than ever to his client — in fact, he's all Volpe's got to present his behavior in a less harsh light. Kornberg has made that more difficult for himself by his over-aggressive tactics. Not only were they offensive — blaming the victim while implying that Louima injured himself while engaged in consensual sex — but in the end they were counterproductive to the defense of his client. Thanks in no small part

to Kornberg, Volpe will now stand before Judge Nickerson at sentencing as someone who vociferously and unequivocally denied his guilt, put his victim through the trauma of reliving his worst nightmares in public, and sounded reluctant to accept responsibility even while pleading guilty.

MORE REMORSE NEEDED

At the guilty plea hearing, Judge Nickerson had to cross-examine Volpe before the defendant admitted he tried to "humiliate" Louima. And instead of apologizing to Louima and his family, Volpe apologized for hurting his own family. Surely, Volpe could have shown a little more remorse — and Kornberg could have done a better job of helping Volpe understand that this is not just about him, but about his victim and indeed, our society.

Kornberg has a reputation as being one of New York's better defense lawyers. He didn't earn that reputation here. ■