



## Jeff Deskovic

# The Irma Marquez Case: What Should Have Happened

As has been public knowledge for quite some time now, there is a serious problem with police brutality in Yonkers. *The Guardian*, nearly two years ago, in September of 2006 virtually opened Pandora's Box with an article about a "Mother, 72, Daughter 49," the Bostwicks, one of whom was roughed up, and the other brutalized and charged with bogus offenses by Yonkers Police. The police were responding to their call because a teenager who had been beaten up and bloodied by a neighbor of theirs came pleading for help to their door.

Within a week of the appearance of their story, the local chapter of the NAACP, chaired by President Karen Edmons, held a seminar at the Riverfront Library, which was attended by approximately 125 people, at which 25 to 30 people came forward to describe their personal experiences and that of their families with Yonkers Police brutality. Their information was recorded by law students from Pace Law School under the direction of Randolph McLaughlin and Debra Cohen.

About a year later, at a similar public forum in Sept. 2007, Mayor Amicone was booed and chased out of the auditorium for trying to suggest that there was no problem.

I will explore what happened to another Yonkers Police brutality vic-

tim, Irma Marquez, and discuss what should have happened as well as discussing community relations between the public and the police department, which was discussed at a recent public forum held in Mount Vernon at the Grace Baptist Church.

In March 2007, Irma Marquez' niece was hit with a bottle and knocked unconscious at La Fonda restaurant in Yonkers. EMTs were called, and Marquez, a middle-aged home health aide, who was present, was also trying to tend to her niece, bending over her while the EMTs were working. An officer took Marquez by the arm and backed her up, and she accidentally stepped on the foot of another officer in the process. At that point Yonkers police officer Wayne Simoes approached and shoved Marquez' shoulder.

Marquez apparently objected to being shoved, and Simoes grabbed her by the waist, lifted her in the air and slammed her face-first into the tile floor, handcuffing her as she lay unconscious. She suffered a broken jaw and extensive bruising and had to be hospitalized for four days. The whole incident was captured on a concealed security video camera.

Marquez was nonetheless arrested and charged with Obstruction Of Governmental Administration, and an internal inquiry cleared Simoes of any wrongdoing.

After Marquez's attorney, Gary Certain, viewed the tape, he asked for the charges to be dropped. Assistant DA Paul Scharf, bureau chief of the local courts and grand jury, responded that he had re-

viewed the tape with Assistant District Attorney Mark Garretto, Bureau Chief in Yonkers, and they had decided to follow through on the case against Marquez. Attorney Certain said he then sent a letter to DiFiore with details of the video and pictures of Marquez's injuries. She called him and indicated the case would be re-examined. However, he never heard back from her until early May, when her Office said it was proceeding to trial.

At some point prior to the jury verdict, the Justice Department informed the City of Yonkers that it was investigating the case. Upon learning that, Yonkers Mayor Phil Amicone held a news conference to praise the department, saying its officers "do their jobs the right way in full accordance with the law." Marquez was acquitted following a jury trial, and proceeded to file an \$11.3 million dollar lawsuit against the police department.

After the trial, Westchester District Attorney Janet DiFiore launched an internal inquiry into how her own office handled the matter. She suggested on Friday, June 27, in a terse written statement that the case was 'mishandled'. She stated, "Personnel have been disciplined, operational changes are being made, and enhanced training is being put in place." Her office declined further comment and wouldn't say who was disciplined. However, Mark Garretto, who had been the bureau chief in Yonkers since DiFiore became district attorney in 2006, was reassigned to the Motions And Appeals Bureau. DiFiore's spokesman, Lucien Chalfen, remained tight-lipped, not willing to say whether Garretto's transfer was related to the Marquez case.

On June 27th the FBI arrested Simoes and accused him of violating Marquez' civil rights. FBI Agent Kristina Norris wrote in a criminal complaint against Simoes filed in U.S. District Court in White Plains that when agents asked police officers about the images from a surveillance videotape that showed Officer Wayne Simoes brutally slamming Irma Marquez face-down to the ground, "Several officers stated that, based on their training and experience, Simoes' use of force against Marquez was unreasonable and excessive."

Simoes surrendered to federal authorities at 9 a.m. in White Plains and made a brief court appearance two hours later. He was released on \$300,000 bond.

Yonkers Police said in a statement that Commissioner Edmund Hartnett has told the department's Internal Affairs Division to reopen its investigation. Additionally, Yonkers police released a statement that said Simoes had been placed on modified duty.

Here is what should have happened: Firstly, the police officers who were on the scene should have arrested Simoes' right there on the spot for assault. The fact that a perpetrator draws his paycheck from a law enforcement position does not excuse him. If anything, the fact that he is in a position of public trust and equipped with a gun and a baton, and other equipment, and has the ability to call others for help, and yet nonetheless abuses it, makes it an aggravating circumstance, Aggravated Assault.

When the other officers failed to arrest him, the supervisor should have arrested him, while suspending those

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officers who were present and did nothing. When that failed, each person up the line in authority should have made the arrest while suspending those under him/her who failed to do so. When the matter ultimately got to the level of the District Attorney's Office, Assistant District Attorneys Mark Garretto and Paul Scharf should have charged Simoes with assault, while also dismissing the charges against Marquez.

After all, the incident was caught on tape and therefore there was no question as to what happened. When that failed, District Attorney DiFiore should have had Simoes arrested and had the charges dismissed against Marquez. A District Attorney is, I believe, ultimately responsible for everything that goes on in the office. In point of fact, they are there to oversee and supervise everything. While I can see how it could get difficult to stay on top of every single thing, at all times, while letting nothing escape one's notice, Attorney Certain stated that he sent a letter to DiFiore with details of the video and pictures of Marquez's injuries, and upon receipt of which she called him and indicated the case would be re-examined. Therefore, she knew precisely what was going on.

As I said earlier, when the officers who were present saw Simoes body-slam Marquez, they should have immediately arrested them. If an ordinary citizen did that to somebody in the presence of police officers, they would be arrested on the spot.

We also see in the Marquez case that the blue wall of silence is very much still alive. Every single one of those officers who maintained that code of silence should be suspended. Lest anyone think that I am anti-cop or overreacting, we are talking about a crime that was initially covered up, and likely still would be but for release of the videotape.

The covering up that typically goes on when the system covers up for the system, no matter what the facts are, manifested itself in the initial police internal investigation clearing Simoes. Mayor Amicone, making his public statement

defending and praising the police when word got out that the Justice Department was investigating Simoes, and the District Attorney's office not dropping the charges against Marquez and arresting him, represent a repititious conspiracy and scenario in blatant violation of the victim's civil rights.

That Marquez had to be subjected to the trauma, expense, uncertainty, and risk of being wrongfully convicted that a trial brings for someone that the tape shows was innocent of, is shameful and unlawful.

Anyone who believes that the re-investigation by the Yonkers Police Department would have happened had the FBI not arrested Simoes, is naïve. In support of that thesis, I would like to point out that the tape and photos were around during the first go around.

I am convinced that Simoes received preferential treatment from the court system once he was arrested, that only the connected, powerful, political, wealthy, and some law enforcement personnel are accorded: being released on bail the same day that he was arrested. This two tiered system of justice—one for the poor and common folk, and the other for those on the upper end of the socio economic status, has got to stop if the law is to have any moral authority.

I believe that the District Attorney's Office should have released the names of those employees who were disciplined. Why should it be a private thing? I believe in transparency in government, and that the public has a right to know what is going on, and why.

When someone has been transferred or disciplined for wrongdoing, the public should know so that we can have confidence that the same individual will not be able to repeat his or her actions, and that it will not be tolerated by any other staff member. It would show that everything is above board, nothing is going on behind the scenes, nothing being swept under the rug, and no us v. them mentality. As a citizen of Westchester, I, along with the public, would like to know, without having to draw an inference; but instead being explicitly told, how the people who were disci-

plined were actually disciplined. Why is it when ordinary citizens are arrested it is announced to the public; their names and what the charges are, and what the punishment ends up being.

Whenever tragedy or misfortune comes, I believe that we have a moral responsibility to victims to do what we can to see to it that they do not suffer for no reason. We, instead, must learn the lessons of the incident and do what we can to prevent any recurrence. The maxim that "Those who fail to learn from the mistakes of the past are doomed to repeat them in the future," is true. Accordingly, I have some concrete ideas involving morality and legislation that would, if followed, prevent future cases such as Irma Marquez.

I would call upon the honest, law abiding police officers of Yonkers to take back the police force from the band of rogue cops who are engaging in police brutality, the breaking of the laws, and general corruption. There should be no feelings of solidarity between honest cops and dishonest ones. Instead, true officer solidarity should come from the observable actions of honest, law-abiding police work that stays within the limits of the law, involves no brutality, cuts no corners, does not violate the rights of any civilians, whether suspects or not; takes no bribes, and engages in no corruption. The maintaining of good relations should be dependent upon the maintaining of those rules.

Prosecutors should pay special attention whenever there are allegations by defendants that they've been roughed up by police. In every instance where that has proven to be the case, charges against accused should be dismissed. To do less than that is to allow rogue law enforcement officers to hijack the legal system and use it to their own ends as a means of covering up their own brutality. It is not unusual for such officers to falsely charge people with "resisting arrest" in order to try to justify their previous unlawful use of force. It also serves to further punish a defendant who they have previously brutalized.

We must enact laws which encourage law enforcement personnel

who witness other officers committing crimes, to step forward and press charges; with the failure to do so being grounds not only for dismissal, but also to be charged with the crime of aiding and abetting and acting in concert. The same should apply to any supervisors who witness, or in any way learn of the occurrence of such activity and yet take no action to investigate and arrest where the evidence is secured.

In reality, those who turn their heads are, in fact, assisting the culture to form in which brutality is acceptable. In my book, that is aiding and abetting. The legislation should be not just on a state level, but also on the federal level, authorizing the FBI and U.S. Attorney to step in whenever state law makers fail to do so. Each time an officer gets away with police brutality, it threatens the safety of us all while setting the stage for acceptability to set in, thus causing it to happen again.

Until such time as legislation is passed to that effect, departments should adopt internal policies requiring officers and supervisors to take action when they witness or otherwise learn of police brutality.

Legislation is absolutely necessary which would establish an independent prosecutor to handle any and all cases involving the police. Police and prosecutors work together, and it is only natural that a certain amount of familiarity or cordiality develops between them, and such personal interaction can often factor into the thought processes with regard to whether to prosecute or not. Someone who has no personal familiarity with the people involved in a case, and can instead look at the facts of a case objectively with no personal consideration; in short, an independent prosecutor is what is needed. An independent prosecutor is not bound by the constraints imposed by the relationship between district attorneys and police.

Additionally, one cannot overemphasize the importance of Civilian Complaint Review Boards. However, such Boards cannot be effective unless they have subpoena power, and the power to suspend and bestow penalties. ■