

Blackface Parodists Win In Court; Cops vs. Firefighters; Still No Dancing Allowed

by {ga=jvitullomartin}

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Controlling the police may be the toughest management job there is. Every patrol study ever done shows that street cops work most effectively when they're given the discretion to respond instantly to trouble. As University of Chicago law professor Kenneth Culp Davis pointed out years ago, the police make far more discretionary determinations in individual cases than any other class of administrators. Culp said there was no close second. Yet police commanders need to know that cops are out there actually working productively and treating community residents fairly. The inevitable tensions are immense and made workable in New York only by the NYPD's evolving structure of carefully selecting, testing, and training recruits - and then supervising them under a chain of command. But in the end, decades of enhanced professionalization and reform mean little without one basic principle: trust. We all have to be able to trust that police officers -- armed and authorized by us to patrol our neighborhoods -- are honorable, decent, sensible people worthy of positions of trust.

The police commissioner's management authority has been undermined by federal Judge John Sprizzo's June 23 ruling, following a non-jury trial, that the city did not have the right to fire a police officer and two firefighters who rode in blackface and wore Afro wigs on a parade float in 1988. Police Officer Joseph Locurto and the two firefighters were punished, wrote Sprizzo, "in retaliation for engaging in protected speech." This "protected speech" involved being part of a float with the banner "Black to the Future: Broad Channel 2098," which the defendants said was a parody of black racial integration into the mainly white Broad Channel neighborhood. They threw watermelon and fried chicken at parade goers and, as the parade was ending, a firefighter grabbed the back of the truck and dangled himself toward the ground, re-enacting the brutal dragging murder of a black man in Texas two months earlier. (You can decide for yourself what you think of the activities on the float by watching the video offered by [ABC News/Channel 7's web site](#).)

This activity constituted protected speech "on a matter of public concern," wrote Sprizzo, because the float sought "to comment on the future racial integration of Broad Channel" and to win the prize for the funniest float, "a prize the group had won in the past with other ethnicity-parodying floats." The group's earlier efforts included "The Gooks of Hazzard," which parodied Asian Americans, and "Hasidic Park" about Jewish Americans. Sprizzo rejected the city's claims about the management consequences of such public behavior going unpunished, writing that this "concern was unreasonable and, in any event, insufficient, as a matter of law, to outweigh plaintiff's constitutionally protected speech rights." The men are all seeking reinstatement in their jobs, back pay, and money damages. A hearing will be scheduled on

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remedies in the case. Corporation counsel says it will appeal.

COPS AND FIREFIGHTERS CLASH AFTER STUPID TRICK CAPER

Cops and firefighters were also in the news for another unfortunate conjunction of the two agencies. An inept burglar who had lowered himself into a chimney in Luigi's Italian Restaurant in Queens started screaming when he found himself stuck. A passerby called 911, which dispatched regular firefighters and police officers from the local 115th precinct, as well as members of two rescue units, the police Emergency Service United and fire's Rescue 4. Once on the scene, rescuers from the two agencies disagreed on how to extract the burglar from the chimney. Firefighters wanted to pull him out from above, while the police decided to rip out the wood paneling covering the shaft inside the restaurant, hacking through a layer of bricks. During the rescue, the police sealed the restaurant as a crime scene and ordered firefighter John Gaine to leave, resulting in a fight and Gaine's arrest. "Well, it's the kind of thing you simply hope would never happen," said Fire Commissioner Nicholas Scoppetta. Mayor Michael Bloomberg said that the police and fire commissioners are meeting to sort things out.

The daughter of the restaurant's owner had suggested pouring olive oil into the shaft to grease the burglar and pop him right out without smashing walls, according to the [New York Times](#). On reflection, though, she decided the cops were right to ignore the idea: "Virgin olive oil is expensive. My mother would have been annoyed."

Luigi's owners told [New York 1](#) that they had been watching "Stupid Acts Caught on Tape" when the whole caper started. They also said they were left with rubble at their restaurant. "Not I've got a hole, destruction, and a mess," said co-owner Josephine Napolitano.

NO DANCING ALLOWED-STILL

Supporters of dance in New York -- and who isn't? -- were elated when they heard that the city's [Department of Consumer Affairs](#) was going to be holding hearings on New York's repressive 77-year-old cabaret laws on June 24. Representatives of [Leg alize Dancing](#) jubilantly predicted that the city's days of regulating, and banning, dancing were over.

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The hearings proved to be no such thing. Formal and stale in format (all questions from the audience had to be submitted in writing), the hearings mainly provided a forum for a few important nightclub owners and representatives to complain about their main beefs. Thus David Rabin, owner of the humongous but fully licensed Lotus and president of the New York Nightlife Association, took the opportunity to protest the mayor's anti-smoking legislation, which nearly everyone in the industry regards as a lethal, business-killing law. One of these days New York is going to end up looking like Cleveland, he told [Newsday](#)'s Dennis Duggan.

He also noted that the main problem for most neighborhoods is what he called "outside noise," rather than the noise from music and dancing in the club itself. The outside noise problem has been greatly exacerbated, of course, by the smoking ban, since smokers now congregate in the streets. Rabin said, however, that no nightclub owner calls the cops because that will only produce a "disorderly premise" ticket, which will then be used against the club's license renewal. Does Yankee Stadium get tickets, he asked, for disorderly patrons? Or Madison Square Garden? Not at all. Both of these are patrolled by cops -- some on duty, some as part of the NYPD's paid detailed unit of off-duty cops. Rabin would like nightclubs to be able to hire off-duty cops (preferably in uniform) to patrol outside the clubs, a proposal supported warmly by the police union, the [PBA](#).

Under the state's Alcoholic Beverage Control Act, which forbids cops from being associated with alcohol sales, police officers are now prohibited from doing security work outside bars.

Sean Schwartz, owner of Halcyon, which lacks a cabaret license, argued that dancing should not be part of the equation to begin with. "It was wrong 77 years ago," said Schwartz, and wrong a few years ago for Giuliani to dust off and enforce the cabaret laws. Indeed, so far this year, the city has padlocked 11 places that permitted dancing without a cabaret license. Between 1999 and 2003, the city had closed 20. According to the [New York Times](#), the Giuliani administration tended to remove or threaten places that held licenses as punishment for a range of violations, from inadequate exits to drug use by patrons.

Passed in 1926 to regulate (some historians say to suppress) jazz in Harlem, the cabaret laws targeted the "social mixing" that seemed to accompany jazz, says NYU Professor of Law Paul Chevigny, author of "Gigs: Jazz and the Cabaret Laws in New York City." The cabaret laws restrained jazz by requiring that a hard-to-get cabaret license be held by any restaurant that had live music.

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In May 1986, the Musicians Union, represented by Chevigny, sued on First Amendment grounds. After a five-year legal battle, New York Supreme Court Judge David Saxe declared the three-musician rule unconstitutional, ruling that live music had to be allowed in zones permitting bars and restaurants. It was a great triumph, but the suit left alone the regulation of dancing, which remained subject to the cabaret license requirement.

Thus restaurants that allow dancing are still held to more stringent zoning requirements than other restaurants, which are permitted in all commercial and manufacturing zones. With their odious history, the cabaret laws have frequently gone unenforced. The Dinkins administration, for example, ignored them altogether. They were resuscitated, however, by the Giuliani administration, which saw them as a potentially powerful tool for shutting down huge, noisy, drug-infested nightclubs.

Relief from the city is not on the immediate horizon. Gretchen Dykstra, the consumer affairs commissioner, said that unless the laws change, which is doubtful, members of the nightlife task force (called March for Multi-Agency Response to Community Hotspots) will continue to crack down on unlicensed cabarets.

Julia Vitullo-Martin, a long-time editor and writer on urban affairs, is the former director of the Citizens Jury Project at the Vera Institute of Justice. She is now writing a book entitled *The Conscience of the American Jury*.