

*Justice For Police Officer*



*Daniel Faulkner*

# JUSTICE 4 POLICE OFFICER DANIEL FAULKNER

On July 3, 1982, having heard weeks of testimony, a jury of 12 citizens sentenced Mumia Abu-Jamal to death for the premeditated murder of Philadelphia Police Officer Daniel Faulkner. Over the next 16 years, Jamal's case has become one of the most publicized Death Penalty cases in the world. It has also become the most misunderstood. The twisted tales about this case are many. They have been told and retold by countless individuals who know little or nothing of the actual facts of the case.

**This website has been established and is maintained by a group of private citizens who believe that an accurate source of information is needed to bring balance and truth to those who are interested in this matter. We are not affiliated with any police organization. We are simply a group of individuals that has grown tired of seeing the outrageous distortions that various Jamal supporters have spread unchallenged, through the media and on the internet. We have gone to great lengths to research the true facts of this case and present them here for the first time. We will continue our research and update this site in the future. Your comments are welcome.**

Mumia Abu-Jamal, his attorneys and his supporters have reaped handsome profits from the murder of Officer Faulkner. Mr. Jamal has been permitted to keep his earnings from two books he has published while on Death Row. He regularly works as a commentator from Death Row and he has gained international notoriety because of his crime. His attorneys, as well as several groups supporting him stage regular speaking engagements around the world promoting their cause. They have received thousands of dollars in donations for their efforts. Our motivation for establishing this site is to see justice done and to prevent people from profiting off the murder of a Police Officer.

We acknowledge that there will always be individuals who will champion the cause of an individual like Mumia Abu-Jamal. It is their right to do so. Our hope however, is that once decent people have the truth about this case made available to them, they will stop the flow of blood money to Mumia Abu-Jamal and abandon him to the fate that he was sentenced to over 16 years ago.

Mumia Abu-Jamal is a twisted sort of hero to some. He's become the latest poster boy for the anti-death penalty movement. The groups supporting him care little of his guilt. Rather they are intent on using him and his case as tools to chip away at the Death Penalty in the United States. We hope you will take the time to read the information contained on this site with an open mind and determine for yourself if he warrants this status.

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## CASE HISTORY

On December 9, 1981 a Philadelphia Police Officer was shot and killed. The officer, twenty five year old Daniel Faulkner, was a decorated five year veteran of the police force, recently married, a U.S. military veteran, a son and a brother.

When police arrived, the shooter was still at the scene. His name was Mumia Abu-Jamal, AKA Wesley Cook. Mr. Jamal had grown up in Philadelphia. He has stated that he spent his youth as an "apprentice of Revolutionary Journalism" for the Black Panther Party. Upon completion of his "training" by the Panthers, he eventually rose to the level of Lieutenant Minister of Information for the Panther's Philadelphia chapter. According to Mr. Jamal, he used his position to call for a "Black Revolution in America."

Prior to the shooting of Officer Faulkner, Mumia Abu-Jamal had been a reporter for WUHY-FM, Philadelphia's National Public Radio (NPR) affiliate. Jamal was also a vocal supporter of a militant anti-government, anti-police group known as MOVE. In 1978, three years prior to the Faulkner murder, several MOVE members were involved in the murder of another Philadelphia Police Officer, James Ramp. They were tried, convicted and sentenced to long prison terms. According to several colleagues and friends, Mumia Abu-Jamal began to publicly rail against the conviction of these MOVE members, and openly support MOVE and its founder John Africa, at work. Prior to the murder of Officer Faulkner, Jamal had been fired from his position as a broadcaster at WHUY-FM due to his extremist rhetoric and for several work related violations. On the morning he murdered Officer Daniel Faulkner, Mr. Jamal was no longer employed as a reporter, and was instead, working as a cab driver. In June of 1982 a trial was convened to hear the case against Mumia Abu-Jamal for the murder of Officer Daniel Faulkner. Mr. Jamal's notoriety in Philadelphia's inner city, coupled with the violent and premeditated nature of the shooting, caused the trial to be highly emotional, and of great public interest. The case was heard in a crowded courtroom in Philadelphia's nearly 100 year-old City Hall. Representatives from the Police Department, the Faulkner family, Mr. Jamal's family and various groups supporting Mr. Jamal, filled the gallery each day of the six-week trial. Judge Albert Sabo presided over what became, for various reasons, a circus like proceeding.

In the 1982 courtroom, acts of civil disobedience, shouting, chanting, violent outbursts, disruptions, forced removals, threats and even physical altercations were daily occurrences. Mr. Jamal regularly disrupted the proceedings, and because of his intentionally disruptive actions, he was removed from the courtroom over 13 times. A running verbal battle was waged between Jamal and his attorney, the prosecutor, and the judge. On July 3<sup>rd</sup>, 1982, having heard the evidence against him, it took a racially mixed jury of 12 individuals just 3 hours to unanimously convict Mumia Abu-Jamal of the premeditated murder of Officer Daniel Faulkner. The sentencing phase of the trial, which proved to be plagued by the same disruptions as the guilt phase, saw the same jury unanimously sentence Mr. Jamal to death in Pennsylvania's electric chair.

For the next several years, Mumia Abu-Jamal accessed the seemingly endless appeals process afforded convicted killers by the U.S. legal system, and he slipped into the anonymity of Pennsylvania's Death Row. The Direct Appeal of his conviction was reviewed and denied by the Pennsylvania Supreme Court in March of 1989. The U.S. Supreme Court subsequently refused to hear his appeal, stating that it would be fruitless and redundant.

Through a series of promotions, Mr. Jamal's cause was taken up by a sampling of social action groups that are drawn to this type of Death Penalty case. In 1990, Jamal's appeal was taken over by a new set of attorneys, headed by Mr. Leonard Weinglass. Mr. Weinglass has made a

career of representing various left leaning social radicals accused of various crimes. Some of his more well known clients included Abby Hoffman, several individuals convicted of kidnapping Patty Hearst, the Chicago Seven and an assortment of others.

Mumia Abu Jamal is not the first "Cop Killer" Mr. Weinglass has represented. He and his law firm have taken on several clients convicted of killing police officers, most notably Leonard Peltier, in an effort to get their release.

On Thursday June 1, 1995, Pennsylvania Governor Tom Ridge signed Mr. Jamal's death warrant, and set August 17, 1995 as his execution date. The following Monday, Jamal's new attorneys filed a request for a Post Conviction Collateral Relief (PCRA). They had been holding this request back for several years, in order to insure a maximum period of delay of Mr. Jamal's execution.

PCRA hearings are designed to afford the convicted individuals the opportunity to address issues that they feel either prove their innocence, or show that they warrant a new trial. The PCRA appeal is heard by a Common Pleas Court Judge, who serves as a "fact finder," for future State and Federal Appeals Court Judges. The "fact finder," is charged with hearing the arguments presented by the defense and the rebuttal offered by the prosecution, in reference to old testimony and newly discovered evidence and witnesses, not known to the defendant at the original trial. Having reviewed the "newly discovered evidence and testimony," the "fact finder" then develops a document called the "Findings of Fact", which are submitted to the State Supreme Court for review and final decision.

Mr. Jamal's PCRA Hearing was convened in June, of 1995. Because he had presided at the 1982 trial, the law required that the Common Pleas Court judge selected to play the roll of "fact finder," was Judge Albert Sabo. Although Judge Sabo had honorably presided over the original trial, Mr. Jamal's attorneys charged that he should voluntarily remove himself from the 1995 PCRA hearing, for reasons of alleged bias against Mr. Jamal. Judge Sabo refused, stating that he was quite capable of presiding over the hearing guided only by the rules of law. Mr. Jamal's attorneys appealed Sabo's decision to the Pennsylvania Supreme Court, and asked that they remove Judge Sabo from the PCRA hearing. The State Supreme Court reviewed this request, and agreed with Judge Sabo. Therefore, Mr. Jamal's efforts to remove Judge Albert Sabo proved unsuccessful.

The 1995 PCRA hearing, which was projected to take roughly 7 days to complete, ground on for nearly seven weeks. Much of the 1995 hearing was held in the same courtroom as the original trial had been. As in 1982, the 1995 PCRA hearing saw several individuals removed from the courtroom, acts of civil disobedience, disruptions, chanting, loud outbursts, the continuous playing of drums, directly outside the courtroom window by Jamal's supporters, and a general air of tension.

In addition to the substantial local media attention, there was also great international media attention. Mr. Jamal's attorneys frequently made

statements to the waiting international press, spinning the day's testimony, and touting their client's innocence. They seized on every opportunity to lambaste the Judge and the District Attorney's office, outside the courtroom.

Upon the completion of the 1995 PCRA hearing, Judge Albert Sabo released his "Findings of Fact," to the Pennsylvania Supreme Court. Nearly all of the "newly discovered" evidence and testimony presented by the defense at the 1995 PCRA hearing, was deemed not to be credible by the court.

In September of 1996, the Pennsylvania Supreme Court granted a second, a highly unusual, supplemental PCRA hearing. At the behest of Jamal's attorneys, this hearing was convened to hear the testimony of an individual that they claimed they could not locate in 1995. This "newly discovered" witness was Veronica Jones, who had testified in 1982 as a defense witness. With great fanfare, Mr. Weinglass billed Jones to the press, as an individual whose testimony would prove Mr. Jamal's innocence, and show evidence of "rampant police intimidation and coercion at the original trial".

The 1996 PCRA hearing lasted several days and was again plagued by the same disruptions and delays, caused by various Jamal supporters. Veronica Jones admitted to perjury, in her 1982 testimony. She was also caught in several additional lies, while testifying at this hearing. In the end, was deemed by the court, "not to have testified credibly," at the 1996 PCRA hearing. Therefore, her testimony will have limited weight in future appeals.

In June 1997, the State Supreme Court of Pennsylvania granted a highly unusual, third PCRA hearing. This time, Jamal's attorneys had come across another individual allegedly unknown to them until 1996. Her name was Pamela Jenkins. Ms. Jenkins was a prostitute, who claimed she had several conversations with a prosecution witness, Cynthia White, about alleged police intimidation of White, prior to the 1982 trial. According to Ms. Jenkins testimony, as recently as a month before the 1997 hearing, she had personally met with Cynthia White. Ms. Jenkins claims that Cynthia White told her that police had forced her to testify falsely against Mr. Jamal, at the 1982 trial.

Like Veronica Jones before her, the prosecution caught Pamela Jenkins too, perjuring herself in her 1997 testimony. At the 1997 hearing, it was proven that Pamela Jenkins lied when she said she had spoken to Cynthia White, the prosecution witness, only two months before the 1997 hearing. This fact was substantiated, when the prosecution produced a death certificate, verifying that Cynthia White had been dead since 1992.

Amazingly, the morning after the prosecution's bombshell, Leonard Weinglass acknowledged on a local radio program, that he was fully aware of the existence of this death certificate. Despite this, Weinglass allowed Pamela Jenkins to present her perjured testimony. Ms. Jenkins

too, was deemed not to have testified credibly by the court. Therefore, nothing she said in 1997 will be considered as fact in future appeals. **On October 31, 1998, the Pennsylvania State Supreme Court ruled on the numerous issues raised by Mr. Jamal's attorneys in their 1995, 1996 and 1997 PCRA appeals. These issues make up the greater part of the myths about this case, which we have address in this document. In a unanimous decision, 6 justices of the Pennsylvania Supreme Court stated, that the issues raised by Mr. Jamal were incredible and without merit. The "Opinion of the Court", was not only a resounding rebuke of the issues raised, allegedly showing Jamal's innocence and evidence of an unfair trial, it is a blistering inditement of the tactics employed by Jamal's attorneys. In addition to calling many of the claims made by Jamal and his attorneys, "preposterous," the court, on no less than 5 separate occasions, chastised Leonard Weinglass for, "misrepresenting the court record". Pennsylvania Governor Tom Ridge is expected to again sign Mumia Abu-Jamal's Death Warrant, in 1999. Mr. Jamal's attorneys have stated that they intend to file an appeal with the Federal Appeals Court, for a new trial. Currently, they have submitted a "Writ of Certiorari", to the U.S. Supreme Court, for review in their fall session. Jamal's Federal appeals, are expected to take years to be completed. Until then, the families and friends of both Officer Faulkner and Mumia Abu-Jamal wait for the outcome to be determined.**

Questions or Comments ?

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## *WHAT HAPPENED ON DECEMBER 9<sup>TH</sup>, 1981*

These are the events of the morning of December 9, 1981 as they have been testified to in the initial 1982 Trial and the subsequent 1995 and 1996 PCRA (Post Conviction Collateral Relief Hearings.) These facts have withstood direct appeal and they represent the testimony of numerous witnesses to this crime that have been deemed "credible" by the court.

At 3:55 AM on December 9, 1981 Daniel Faulkner, a twenty five year old police Philadelphia Police Officer Daniel Faulkner observed a light blue Volkswagen driving down 13<sup>th</sup> Street (a one

way street) the wrong way and then turning east onto Locust Street. Officer Faulkner then pulled the Volkswagen over in view of several eyewitnesses.

Prior to leaving his car, Faulkner radioed for a police wagon to back him up. Unknown to him, this would later help preserve the scene of his own murder. Officer Faulkner exited his vehicle and approached the driver's side of the Volkswagen, which was being driven by Mr. William Cook. Officer Faulkner asked Mr. Cook to exit his car. As the officer was looking away, several witnesses stated that they saw Mr. Cook punch Officer Faulkner in the face, violently attacking him. The officer responded by striking Cook, apparently with his flashlight, and then turned Cook towards the car attempting to subdue him.

For reasons that remain unknown today, sitting in a taxicab across the narrow street and watching the events as they unfolded, was William Cook's older brother, Wesley Cook (AKA Mumia Abu Jamal). According to witnesses, Mr. Jamal exited his taxi and ran across the street toward the Officer and his brother, William Cook. While Officer Faulkner was distracted by Mr. Cook, with his back turned to Mr. Jamal, Mr. Jamal was seen raising his arm and then firing one shot that found its mark in Officer Faulkner's back. A tract Metal Test for Primer Lead done before the trial positively showed that the shot was fired from approximately 10- 12 inches. Officer Faulkner was able to draw his gun and fire one return shot at his assailant, Mumia Abu-Jamal. This bullet was later extracted from Mr. Jamal's upper abdomen. Having fired this shot, Officer Faulkner fell to the sidewalk. While the wounded officer lay helpless and unarmed on his back, Mr. Jamal was seen by four individuals standing over the Officer with his five shot, .38 caliber Charter Arms revolver in his hand. From approximately 3 feet, Jamal began to fire at the officer's upper body.

Officer Faulkner is believed to have been conscious at this point and to be looking up at his assailant, who was later identified by several people at the crime scene as Mumia Abu Jamal. It's believed that in an attempt to save his life, Faulkner began to roll from side to side as Jamal fired at him. Jamal missed his first several shots. He then moved closer to Faulkner and bent down over him. Mr. Jamal put the muzzle of his gun within inches of Officer Faulkner's face, and squeezed off the final, and fatal, shot. The bullet entered the officer's face slightly above the eye and came to rest in his brain, killing him instantly.

## *NAMES OF KEY INDIVIDUALS IN THE CASE*

**BELL, GARY OFFICER:**

Witness to Jamal's confession. Officer Daniel Faulkner's partner.

**BURNS, HUGH:**

Assistant District Attorney representing the Commonwealth of Pennsylvania in Jamal's appeals.

**CHOBERT, ROBERT:**

Prosecution witness. (Cab driver who was an actual eyewitness to the shooting.)

**COOK, WILLIAM:**

Mumia Abu-Jamal's brother, who was driving the Volkswagen that was pulled over by Faulkner.

**COLLETTA, DR. ANTHONY:**

Jamal's attending physician at the emergency room.

**DURHAM, PRISCILLA:**

Hospital security guard who overheard both of Mumia Abu-Jamal's Emergency Room confessions.

**FASSNACHT, GEORGE:**

Defense Ballistics Expert at both the 1982 trial and the 1995 PCRA appeals hearing.

**FAULKNER, DANIEL OFFICER:**

Victim.

**FISK, ARLENE:**

Assistant District Attorney representing the Commonwealth of Pennsylvania regarding Jamal's appeals.

**FORBES, OFFICER JAMES:**

First police officer to arrive at the crime scene. Also heard William Cook's statements at the scene.

**GREER, ROBERT:**

Defense Criminalist (Investigator) in 1982 and at the 1995 PCRA appeals hearing.

**HARKINS, ROBERT:**

1995 PCRA Defense eyewitness. Actual eyewitness to the shooting.

**HIGHTOWER, DESIE:**

1982 and 1995 PCRA Defense witness.

**HOYER, DR. JAMES:**

Assistant Medical Examiner. Removed the bullet from Officer Faulkner's brain.

**JONES, VERONICA:**

1982 and 1996 PCRA Defense witness.

JONES, OFFICER VERNON:

Highway patrol officer who spoke to William Singletary.

MAGILTON, ALBERT:

1982 Prosecution witness who was an actual eyewitness to shooting.

McGILL, JOSEPH,

Assistant District Attorney who prosecuted the case against Mumia Abu-Jamal in 1982.

PAUL, ANTHONY:

1982 Prosecution Ballistics Expert.

RIBNER, JUDGE:

Judge at the 1982 Preliminary hearing.

SABO, JUDGE ALBERT:

1982 trial judge who also presided over the 1995, 1996 and 1997 PCRA appeals hearings.

SCANLON, MICHAEL:

1982 Prosecution eyewitness to the murder.

SINGELTARY, WILLIAM:

1995 PCRA Defense witness.

TUMOSA, DR. ANTHONY:

1982 Prosecution ballistics expert.

WAKSCHUL, OFFICER GARY:

1995 PCRA witness. Overheard Mumia Abu-Jamal's 1981 hospital confession.

WEINGLASS, LEONARD:

Mumia Abu-Jamal's current lead attorney from 1990 to present.

WHITE, CYNTHIA:

1982 Prosecution eyewitness to the shooting.

WILLIAMS, DANIEL:

Mumia Abu-Jamal's current assistant attorney.

WOLKENSTEIN, RACHAEL:

Mumia Abu-Jamal's current assistant attorney.



## SUMMARY OF THE CASE FACTS

On December 9<sup>th</sup>, 1981, Mumia Abu-Jamal murdered 25-year-old Philadelphia Police Officer Daniel Faulkner. On July 3rd, 1982, Mr. Jamal was convicted of first-degree murder, and sentenced to death. This document details the main issues regarding this case. It is intended to give the reader a general understanding of the substantive issues regarding the case against Mumia Abu-Jamal. The information shown here comes directly from the trial transcripts and the original statements given to police.

### WHO WAS MUMIA ABU JAMAL?

According to Mr. Jamal, he spent his youth as an "apprentice in revolutionary journalism" for the Black Panther Party. The Panther's were a group that, along with their legitimate "social work," advocated violence, kidnapping, drug dealing and murder, as appropriate methods of response to perceived government and police oppression. Having completed his Panther training, Jamal rose to the rank of Lieutenant Minister of Information, for the

Panther's Philadelphia Chapter. Mr. Jamal later became a local reporter at NPR affiliate station, WUHY-FM, (now WHYY) in Philadelphia.

*NOTE: Along with millions of others, it appears that the Mumia propaganda machine duped us too. When we first went on line, based on the information we collected while researching this issue, which included articles written by Jamal's supporters, we had stated, "Mumia Abu-Jamal was a longstanding critic of the Philadelphia Police Department." However, since our initial posting of this site, we have been contacted by several credible sources, including Pulitzer Prize winning author Buzz Bissinger and various reporters who worked for local Philadelphia newspapers in 1981. These individuals have informed us, that Mumia Abu-Jamal was known in Philadelphia's inner city for his reports on social issues, but he was not well known, as a critic of the police department in Philadelphia.*

*In his article, The Guilty and the Dead, Buzz Bissinger states, that William Marimow, who shared in a Pulitzer Prize for public service in 1978 for his reporting on police abuses in Philadelphia, and who is now the managing editor of the Baltimore Sun, told him, "I was very attuned to everyone who wrote about Philadelphia police violence. This guy [Jamal] didn't register a blip on my radar screen." Mr. Jamal's journalistic prowess regarding police issues in 1981 has little to do with this case, other than the fact, that his attorneys had always suggested he was "targeted by police" because he was a constant nuisance to them, and because he had "exposed" much of their alleged wrongdoing. Based on the information that is now available, this appears not to have been the case at all.*

In 1981, Mr. Jamal was an avid supporter of a militant anti-government, anti-police group, known as MOVE. Founded and headed by a man named John Africa, MOVE was headquartered in Philadelphia's Center City. Most MOVE members lived together in a single row home. For several years preceding the murder of Officer Faulkner, MOVE's members had been in constant conflict with their neighbors, as well as various Philadelphia City officials. Based on comments made by residents who lived adjacent to the MOVE home in 1978, Move's members would allow mountains of trash to pile up in front of their home, attracting vermin to the neighborhood. They also threw buckets of human waste from their windows and used a loudspeaker system to blast the militant doctrine of John Africa from their windows around the clock. In 1978, after repeated requests from their neighbors and having already received several citations for serious health code violations, the Philadelphia Police Department attempted to evict the MOVE clan from their rented home. As they did, a lengthy and

violent gun battle broke out. When the shooting stopped, Police Officer James Ramp had been killed. Nine MOVE members were tried for Officer Ramp's murder. All were convicted and sentenced to lengthy prison terms.

The trial and the sentences handed down for Officer Ramp's murder enraged Mr. Jamal. He used his position at the radio station to attack the Philadelphia Police Department, its chief and the city's major, Frank Rizzo. According to Mr. Jamal's friends and co-workers, he openly began to espouse the teachings of John Africa while at work. Due to his outspoken and inflammatory rhetoric and numerous work related violations, Jamal was fired from his radio job at WUHY-FM. For the next several years, Mr. Jamal failed to find new employment in local media. As stated by many of his colleagues, by 1981 he had become a local media pariah. On the night he murdered Officer Daniel Faulkner, Mumia Abu-Jamal had not worked as a reporter for an extended period of time, and was working as a cab driver to make ends meet.

## **THE TRIAL OF MUMIA ABU-JAMAL**

### **THE SELECTION OF A DEFENSE ATTORNEY**

The trial of Mumia Abu-Jamal began with jury selection in June of 1982. Initially, Jamal was to be represented not by a Public Defender, but instead by a court appointed attorney who was in private practice. Mr. Jamal was given the opportunity to offer his personal input into the selection of the attorney, who would defend his life in the courtroom. The record reflects that Jamal personally interviewed several prospective attorneys and finally suggested that Anthony Jackson be selected as his defense counsel. Anthony Jackson was fully qualified to represent Mumia Abu-Jamal, and came highly recommended by Jamal's friends. Prior to graduating from the prestigious University of Pennsylvania Law School, Mr. Jackson had worked "as an evidence examiner for the Philadelphia Police Department," and admittedly gained an in depth knowledge of legal science and technology. In addition, Mr. Jackson had worked as a private investigator and, for a short time, as an Assistant District Attorney in Philadelphia. Prior to taking on Jamal's case, Anthony Jackson had previously represented no less than 20 defendants accused of first-degree murder. Of those cases, he had lost only 6. Additionally, prior to the Jamal case, Mr. Jackson had never had a client sentenced to Death. Immediately before he assumed control of the Jamal case in January 1982, Mr. Jackson was working with an organization known as "Philcop." This organization represented claimants and instructed attorneys in how to file personal injury (police brutality)

lawsuits against the Philadelphia Police Department for various alleged abuses.

### THE MONTHS PRECEEDING THE TRIAL

Prior to the 1982 trial Anthony Jackson was settling into his new role as an attorney in private practice. Initially, he had no office or secretary. However, he states by January 1982 he had opened his doors for business. Mr. Jackson has stated under oath, that he began to work on Mr. Jamal's defense beginning in early January 1982, roughly 6 months prior to the beginning of the trial.

The trial record reflects, that the court initially allocated roughly \$13,000 to pay Mr. Jackson for his services, and for investigative costs. The court later allocated an additional amount, in excess of \$1,400, to hire investigative experts in Jamal's behalf. Mr. Jackson has acknowledged, that he also received additional funding from Jamal's friends and family, but he refused to disclose the amount of that sum while being questioned in 1995.

On May 13, 1982, only a few weeks before the trial began, Mr. Jamal suddenly and unexpectedly decided to remove Mr. Jackson as counsel, and he personally took control of his own defense. According to Mr. Jackson, Jamal's decision to proceed in the trial "pro se," was brought about by Mr. Jamal's perception that Jackson was ineffective, in attaining adequate funding from the court to pay for outside assistance. Mumia Abu-Jamal took physical control of all the witness statements, and various other important documents and he began to defend himself from his cell. While testifying at the 1995 PCRA hearing, Anthony Jackson stated that when Judge Sabo re-instated him as lead counsel on the second day of the trial, Jamal failed to return many of these statements to him, further hampering his efforts to mount a defense in his behalf. Mumia Abu-Jamal represented himself at his preliminary hearing. In May 1982, Mumia Abu-Jamal was again permitted to represent himself, with the assistance of Anthony Jackson, before Judge Albert Sabo at the Motion to Suppress. At this hearing, Jamal extensively questioned several witnesses, some of whom would later testify against him later, at the actual trial.

### **THE JURY SELECTION PROCESS**

Unlike most trials, the jury selection process (voir dire) in Jamal's trial was quite eventful. In fact, it set the tone for the rest of the trial itself, and was a preview of things to come. Jury selection began in June of 1982. Mr. Jamal again represented himself in this phase of the trial. Over the course of two days, he personally questioned 20 prospective jurors. By the end of the second day of jury questioning, 1/3 of the available jury pool had been questioned and only 1 of the required 12 jurors and alternates had

been selected. Many that attended the 1982 trial felt Mr. Jamal's general appearance, demeanor in the courtroom and style of questioning, were perceived as threatening by the prospective jurors. To evidence this, the court record for 6-8-82 reflects that when asked if she felt uneasy while being questioned by Mr. Jamal, one of prospective jurors, Ruth Swank, stated that Jamal's questioning of her "scares me to death" (6-2-82, T.R. 2.138). Other prospective jurors echoed similar concerns.

It was at this point that Prosecutor Joe McGill suggested to Judge Albert Sabo that the court (Judge Sabo himself) assume the jury questioning, for both the prosecution and the defense, from that point forward. This was well within the legal guidelines of Pennsylvania State law in 1982, which clearly stated that the court might at any time and for any reason assume the jury selection process. Judge Sabo openly acknowledged that the jury selection process was taking far too long. He also noted, that it was his observation many of the jurors appeared to be adversely effected by Mr. Jamal's questioning. He further stated, that there was a distinct possibility if Mr. Jamal continued, that the entire jury pool might be used up without seating the necessary 12 jurors and alternates.

The record reflects, that during a side bar conference to discuss this matter, Jamal, who was still representing himself at this point, became agitated by Judge Sabo's comments and began to shout at him. Jamal stormed away from the side bar conference, ordering Anthony Jackson, who was functioning as "back up" counsel, "not to participate in the proceedings at all." It was at this point that Mumia Abu-Jamal first demanded to have John Africa, the founder of MOVE, and a non-lawyer, "represent him," and question the prospective jurors in his behalf. Jamal stated:

"I don't want him [Anthony Jackson] to conduct the voir dire (jury selection) for me and I don't want you [Judges Sabo] to do it for me. I want John Africa." (6-9-82, T.R.3.33)

Judge Sabo offered Mr. Jamal the opportunity to review the questions proposed by the prosecution and Jamal refused to look at them. He also refused to offer any questions of his own, and he instructed Jackson not to look at the questions placed before them by Judge Sabo. At this point, Mr. Jamal stated that he considered court-conducted voir dire (jury selection) "a damned farce."

Because of these actions, Judge Sabo chose to conduct the questioning of the next 12 perspective jurors, until lunch recess. Following lunch, having quieted Jamal, Anthony Jackson stepped in and offered an impassioned and compelling argument, persuading Judge Sabo to take a more moderate course than the one offered by Mr. McGill. Based on Mr. Jackson's argument, Judge Sabo agreed to allow Mr. Jamal to personally develop the

questions to be asked of each prospective juror. Then, the formally trained and experienced, Anthony Jackson, would ask these questions in Jamal's behalf. Once the responses were heard, Judge Sabo permitted Mr. Jackson to approach Mr. Jamal and confer with him. The record reflects, that Jamal was then permitted to personally decide each of the following questions: if one of his 20 preemptory challenges should be used to strike the prospective juror, if the defense should challenge the prospective juror for cause, or if they should accept the prospective juror. In addition to protecting Mr. Jamal from being judged by a jury that had antagonistic feelings towards him, Judge Sabo stated, that he felt this process would sufficiently speed the jury selection process. This approach was acceptable to everyone involved, Sabo, Jackson and McGill. Sabo asked Mr. Jamal if he felt Mr. Jackson had misrepresented his wishes, and Jamal refused to respond. His silence was noted as an affirmation and the court record clearly reflects that this is how the rest of the jury selection process was completed.

Judge Sabo's process did speed the selection to a normal pace, and within a few days a jury of 12, plus the necessary alternates, was seated. Through this process, Mr. Jamal was personally allowed to select his own jury. The record clearly shows, that Mumia Abu-Jamal determined how each of his 20 preemptory challenges was used, challenged numerous jurors "for cause," and agreed to the individuals who were eventually seated to judge him.

When the jury was seated, Jamal had used each of his 20 preemptory challenges, while the Prosecution had used just 15 of theirs. The jury that was selected to hear the case was made up of both men and women and had an initial racial makeup of 3 blacks and 9 whites. (Early in the trial, both, the Prosecution and the Defense, would agree to dismiss one of the 3 black jurors, Jennie Dawley, for violating sequestration when she left the hotel to attend to a sick cat.) In addition to verifying that the first two jurors seated were black, the record also verifies that the Prosecution approved a fourth black juror (Mr. James Burgess). However, Mr. Jamal, while representing himself, chose to "remove" Mr. Burgess, with one of his preemptory challenges.

## **THE CASE AGAINST MUMIA ABU-JAMAL**

The Prosecution's case against Mumia Abu-Jamal was three pronged. First, there were 4 eyewitnesses to the crime who stated that Jamal was the killer. Second, there was significant scientific and ballistic evidence pointing to Mr. Jamal's guilt. Finally, there were three individuals who heard Mr. Jamal shout out two self-incriminating statements immediately outside the hospital

Emergency Room. By any standard, the amount of evidence against Mr. Jamal was considerable.

The defense, on the other hand, failed to present a case pointing to Jamal's innocence. Had Jamal been innocent, their most logical exculpatory eyewitness, (other than Jamal himself) was William Cook, who, in addition to being the driver of the car Officer Faulkner pulled over that morning, was Mumia Abu-Jamal's brother. Mr. Cook was seen by several witnesses to have been only a few inches away from Officer Faulkner, when he was shot. Yet the defense, which included Mr. Jamal working in consort with Mr. Jackson, chose not to have William Cook take the stand in his brother's behalf in 1982. Mumia Abu-Jamal too, refused to take the stand to proclaim his innocence and explain what had occurred on December 9<sup>th</sup>. Additionally, the defense never called George Fassnacht, their ballistics expert, to testify in 1982. Nor did they ever request the representation of a forensic pathologist at trial. The burden of proof obviously fell to the prosecution. Therefore, in 1982, the Defense focused their efforts on casting doubt on the accuracy of the testimony offered by the prosecution witnesses, by pointing out the apparent discrepancies in their testimony as it compared to their original statements, and by hammering away at their credibility, based on their personal backgrounds. (One prosecution witness was a prostitute, another, had a conviction for arson, a crime he committed, when he was 18 years old.)

#### WHAT THE EYEWITNESSES SAW

At the 1982 trial, four (4) eyewitnesses, none of who knew each other prior to the shooting and each of who was deemed to have testified credibly by the court, have stated that they witnessed the following sequence of events:

At 3:51:08 AM on December 9<sup>th</sup>, 1981, Officer Faulkner pulled a Volkswagen over for driving the wrong way down a one way street with it's lights off.

William Cook, Mumia Abu Jamal's brother, was driving the vehicle. He exited the car and shortly thereafter several witnesses saw him attack Officer Faulkner, punching Faulkner in the face. Several eyewitnesses saw Mumia Abu-Jamal running across the street towards the scene with his arm raised. Prior to the police stop of his brother, Jamal was coincidentally sitting in his cab across the street in a parking lot.

From less than two feet away, Jamal fired a shot, which hit Officer Faulkner in the back.

Faulkner was able to remove his revolver, turn and fire one shot at his attacker. The bullet found its mark in Mumia Abu Jamal's chest.

The wounded Faulkner then fell to the ground.

Jamal stood over the unarmed officer and fired several additional shots at Faulkner's upper body.

Jamal then took the time to bend down, put the barrel of his gun inches away from Officer Faulkner's face and fire the final and fatal shot, killing him instantly.

Jamal then staggered several steps and collapsed on the curb.

Moments later, police apprehended Jamal, his gun at his side, only a few feet from Officer Faulkner's body. They then placed him in the back of a police van.

### **1) THE EYEWITNESS TESTIMONY.**

As stated earlier, the Prosecution presented four eyewitnesses to the murder of Officer Daniel Faulkner at the 1982 trial (Robert Chobert, Michael Scanlon, Cynthia White and Albert Magilton).

*NOTE: Subsequently, a fifth eyewitness was brought forward by the defense at the 1995 PCRA hearing. This man, Robert Harkins, had filed a written statement with police on the morning of the shooting, stating that he had witnessed the crime. However, neither the Prosecution nor the Defense chose to call Mr. Harkins to testify in 1982.*

*NOTE: The defense has recently tried to state that four additional individuals were actual eyewitnesses to the murder (William Singletary, Desie Hightower, Veronica Jones and Debra Kordansky). The record reflects that though each of these individuals was close to the area of the shooting that morning, only Mr. Singletary has ever stated that he witnessed the actual shooting. Of Mr. Singletary, Leonard Weinglass Jamal's current attorney said, "We believe his recollection of the events that morning are not entirely accurate." Each of the other three witnesses has stated that they came on the scene well "after the shooting had ceased," and that they "never saw the officer actually shot."*

### **Eyewitness Robert Chobert**

Twenty-two year old Robert Chobert was a cab driver, parked directly behind Officer Faulkner's patrol car, just two car lengths away from where he fell. Only moments after the shooting, Robert Chobert physically identified Mumia Abu-Jamal as the killer, and was then transported to Philadelphia's main police station, the "Round House," arriving there at 4:15 AM.

At 4:25 AM, just 35 minutes after the shooting, Mr. Chobert gave his statement to police. He stated:

"I was writing down on a pad how much my fare was. Then I heard a shot. I looked up and I saw a cop who was on the pavement next to his car, his car was parked a little in front of my car. I saw the cop fall to the ground when I looked up and I saw this black male stand over the cop and shoot him a couple of more

times. Then I saw the black male start running towards 12<sup>th</sup> St. He didn't get very far, maybe thirty or thirty-five steps and then he fell. I got out of my cab and started walking over to the cop. When I got up to him all of the sudden all of the cops came and told me to get back. Then I got back in my cab and I was getting ready to leave, but they had me blocked in." (Chobert Statement, 12-9-81) Mumia Abu-Jamal was found with a gun at his side, in the exact spot that Mr. Chobert said the killer fell. Mr. Chobert further stated, that there was a second man at the scene, William Cook. In his written statement to police, when asked what happened to this man, Mr. Chobert said, "I saw another guy running, but the police got him too." (Chobert Statement, 12-9-81) Robert Chobert clearly states, that both the man who killed Faulkner (Jamal) and the man who had been in front of the car with Officer Faulkner before the shooting started, (Cook) had been captured.

At the Motion to Suppress, while being questioned by Jamal, who was acting as his own attorney at the time, Mr. Chobert is asked:

Jamal, "You did see the cop being shot- the man shoot the cop?"

Chobert- "Yeah, I said I did didn't I."

Jamal- "Well, you sure did. And you saw me in the back of the wagon didn't you?"

Chobert- "Yes, I did."

Jamal- "What made you certain it [I] was the same man?"

Chobert- "Because I saw you, buddy. I saw you shoot him!"

Jamal- "You saw me-"

Chobert- *I saw you shoot him, and I never took my eyes off you until you got in the back of the wagon.* (6-2-82, TRIAL RECORD PG. 2.74-5)

At the 1982 trial, Mr. Chobert's testimony was as follows:

"I heard a shot. I looked up, I saw a cop fall to the ground, and then I saw Jamal standing over him and firing some more shots into him. Then I saw him [Jamal] walking back about ten feet and he just fell by the curb." (6-19-82, TRIAL RECORD PG. 210-211)

The jury heard about Mr. Chobert's discrepancy in the distance that he had originally stated Jamal "ran," as it compared to his testimony. While cross-examining Mr. Chobert, Jamal's attorney repeatedly questioned him about the fact that he had altered this detail in his story. Chobert stood up to this blistering cross-examination and stated, "I know who shot the cop and I ain't going to forget it." (6-19-82, T.R.27)

### **Eyewitness Michael Scanlon**

Michael Scanlon was a businessman from out of state, who was visiting Philadelphia on December 9, 1981. At 3:52 AM on December 9, 1981, having just dropped off a friend at his apartment, Mr. Scanlon was returning to his hotel. While waiting

for the light to change, he was sitting stationary at the intersection of 13<sup>th</sup> St. and Locust, roughly 100 feet from the shooting.

Michael Scanlon watched the entire murder unfold before him. He then "turned left up 13th to look for help." He returned to the crime scene a short time later to give a statement to police.

In that statement, given at 4:24 AM, just 32 minutes after the shooting, Mr. Scanlon said:

"I was coming down Locust St. in my auto, having just dropped a friend off at the Academy of Music at Broad and Locust. I had just stopped at the red light where the club Whispers is located. I noticed the Officer approach a black guy standing outside a car, in front of it. The Officer asked him a few questions and then he spread the guy across the car with his arms out, and the guy turned back around and swung at the Officer. The Officer pulled his billy club out and swung hard at the guy, hitting him several times on the arm and the back. The guy was bigger than the Officer. Then I noticed another black guy come running across the street towards the Officer and the guy he was hitting. Then the guy running across the street pulled out a pistol and started shooting at the Officer. He had the gun pointed at the Officer. He fired while he was running at the Officer once, and the Officer fell down. Then he stood over the Officer and he fired three or four more shots point blank at the Officer on the ground. I looked around for another Policeman and didn't see one, so I took off in my car to look for one. I found one on Walnut Street about a block towards Broad. I told them I had just seen an Officer get shot and told them where. I followed them down in my car. I lost them but I just went back down there." (Michael Scanlon Statement 12-9-81,

4:24 AM)

Michael Scanlon was also clearly able to identify the shooter by the clothes he was wearing. In his original statement to police Scanlon stated:

"I saw he [the shooter] had long, wide, sideburns, dark skin, wearing a black knit cap, like over the back of his head, holding the hair in. He had a long-sleeved sweater on. I think it was red and black, or yellow and black." (Scanlon Statement, 12-9-81) Mumia Abu-Jamal was wearing a red and blue-stripped jacket when he was apprehended at the scene.

In his 1982 trial testimony, having first stated that he saw William Cook attack Officer Faulkner by punching him in the face, Mr.

Scanlon stated:

"At that point, the Officer reacted, trying to subdue the gentleman, and during that time, another man came running out of the parking lot across the street towards the officer and the gentleman in front of the police car. I saw his hand come up, like this, and I heard a gunshot when the man got to the policeman and the gentleman he

had been talking to. Then the officer fell down on the sidewalk and the man walked over and was standing at his feet and shot him twice, I saw two flashes." (6-25-82, TRIAL RECORD PG. 8.6-7) When asked if he was believed any of the shots fired by the man who ran from the parking lot, hit Officer Faulkner, the following exchanged occurred.

*ADA McGill: "Do you know whether or not any of those shots hit the officer?"*

*Mr. Scanlon: "Yes, Sir. I could see that one hit the officer in the face. Because his body jerked. His whole body jerked." (6-25-82, TRIAL RECORD PG. 8.8)*

In his 1982 testimony, Michael Scanlon was also able to physically identify the man who fired the fatal shot.

Jackson: By the way, do you know whether it was the driver, or the man who ran from the parking lot who fired the shots?"

Scanlon: "It was the man who ran from the parking lot." (6-25-82, T.R. 8.34)

In reference to who it was that shot Officer Faulkner, Mr. Scanlon also states:

"He had on a -- I think a red-and-blue striped coat or sweater." (6-25-82, T.R. 8.40)

Again, Mumia Abu-Jamal was wearing a red-and-blue striped jacket when he was apprehended at the crime scene.

### **Eyewitness Cynthia White**

Cynthia White was a prostitute who was standing on the corner of 13<sup>th</sup> and Locust St. that morning, roughly 30 feet away from the shooting. Ms. White gave her original statement to police at 4:15 AM, just 20 minutes after the shooting, and at the same time Robert Chobert was giving his statement, to a different police officer.

In her original statement to police Cynthia White said:

"I saw a Police Officer pull over a Volkswagen. One guy was in the Volkswagen. The Police Officer got out of the car and went over to the Volkswagen. When he got to the Volkswagen, the driver of the Volkswagen got out. They both walked towards the Police car. They got to the front of the car. Another guy came running out of the parking lot on Locust St. He had a hand gun his hand. He fired the gun at the Police Officer about four or five times. The Police Officer fell to the ground. Is started screaming. The guy who shot the Police Officer was sitting on the curb. The guy who got out of the Volkswagen was standing there. A Police wagon came from 12<sup>th</sup> St. over Locust St. One of the Officers got out of the wagon and went over to the Police Officer. Other Police Officers arrived. I was trying to tell them who shot the Officer, but they wouldn't listen. The Police handcuffed the man who was

sitting on the curb, the man who shot the Officer. Then they took the man who got out of the Volkswagen." (Cynthia White Statement 12-9-81)

In her statement, Cynthia White is asked to describe the man who shot Officer Faulkner.

Question: "Can you describe the man who fired the gun?"

Answer: "He was a black male, short, in his 20's, and he also wore his hair in dreadlocks."

In her 1982 trial testimony, Cynthia White stated:

"I looked across the street in the parking lot and I noticed he [Jamal] was running out of the parking lot and he was practically on the curb when he shot two times at the Police Officer. It was in the back. The Police Officer turned around and staggered and seemed like he was grabbing for something. Then he fell. Then he [Jamal] came on top of the Police Officer and shot some more times. After that he went over and he slouched down and he sat on the curb." (6-25-82, Trial Record PG. 8.75-7)

### **Eyewitness Albert Magilton**

Albert Magilton was a pedestrian, who was walking across 13<sup>th</sup> and Locust Street. Mr. Magilton was roughly 100 feet from the shooting, and was standing very close to Michael Scanlon's car. Mr. Magilton stated that he watched the entire scene unfold before him. However, to avoid being struck by a passing car, at the exact moment he heard shots fired, Magilton had to turn his head and look away from the scene for an instant. Despite not seeing the flash of the gun, Mr. Magilton specifically stated, that prior to that moment he saw Jamal, "running from the parking lot towards Officer Faulkner with one arm raised in a shooting fashion." Within moments of the shooting, Albert Magilton physically identified Mumia Abu-Jamal to police, as "the man he had seen running from the parking lot with his arm raised."

Mr. Magilton's 1982 testimony was as follows:

"I noticed the gentleman [Jamal] coming from the parking lot. He was moving across the street towards where the officer had stopped the Volkswagen. I heard two shots and I didn't see the Officer no more. I proceeded back across the street to see what happened to the Officer. And then as I proceeded back across the street I looked. When I got to the pavement, I had looked down and I had seen the Officer lying there and I didn't see the other gentleman [Jamal] until I -- until I moved closer and he was sitting on the curb." (6-25-82, T.R. 8.75-7)

When asked:

McGill: "Did you later see that man that you saw running across the street and that you saw at the curb anywhere else?"

Magilton: "Yes, they [the police] were putting him in the paddy

wagon. An officer had seen me up there and asked me if this was the man. I said, that's the man I seen coming from the parking lot." (6-2-82, TRIAL RECORD PG. 2.95)

### **Eyewitness Robert Harkins**

**Despite giving a written statement to police just one hour after the shooting, Robert Harkins was not called to testify by either side at the 1982 trial. However, he was called to testify as a Defense witness at the 1995 PCRA Appeals Hearing.**

Like Robert Chobert, Mr. Harkins was also a cab driver. He drove up to the shooting, at the moment it occurred. Leonard Weinglass, Jamal's current attorney, has stated publicly, "Mr. Harkins was possibly the closest person to the killing."

Mr. Harkins gave a written statement to police at 6:00 AM on December 9, 1981, just 2 hours after the killing. In this statement Robert Harkins said:

"On 12-9-81 between 3:30 AM and 4:00 AM while traveling East on Locust St. from Broad St. I was approaching 13<sup>th</sup> St. when I observed a police car with its dome lights on. And then I looked over and observed a Police Officer grab a guy, the guy then spun around and the officer went to the ground. He had his hands on the ground and then he rolled over. At this time the male who was standing over the officer pointed a gun at the officer and fired one shot and then he fired a second shot. At this time the officer moved a little and then went flat to the ground. I heard a total of three shots and saw what appeared to me to be three flashes from the gun of the man standing over the Officer. When I saw the Officer go flat to the ground, I drove down the street and at 12<sup>th</sup> St. and Locust St. I saw a police wagon which was traveling south on 12<sup>th</sup> St. and I told them that a cop got shot back there and one of the Officers, the passenger, said "a cop?" and I said yea, a cop. At this the wagon turned onto Locust St. and then after that there were a lot of cops that came. It was only a minute from the time the officer got shot until the first cop came." (Robert Harkins

Statement 12-9-81)

At the 1995 PCRA Appeals Hearing, the Prosecution objected vigorously to Mr. Harkins being allowed to testify about what he had seen in 1981. The basis for their objection was that the State Supreme Court had only approved Mr. Harkins to be questioned about a photo line up he had allegedly been shown. Overruling the Prosecution's repeated and vehement objections, Judge Albert Sabo permitted the Defense to ask Mr. Harkins their questions, regarding what he had seen that morning.

On 8-25-95, Robert Harkins was asked by Mr. Jamal's attorney, Dan Williams, to describe what he had seen the morning of December 9, 1981.

Robert Harkins: "I seen the guy [the shooter], he shot the thing, having the gun, the guy [the officer] was lying there. They were spinning around the pavement."

Dan Williams: "Who was spinning around?"

Robert Harkins: "The cop and the – they was like wrestling a little bit and the cop fell down. He [the shooter] leaned over and two, two to three flashes from the gun. But then he walked, and sat down on the curb."

Dan Williams: "The guy who did the shooting walked and sat down on the curb?"

Robert Harkins: "On the pavement."

(8-2-95, PCRA APPEALS HEARING TRIAL RECORD PG. 208-9)

Catching the defense off guard with his 1995 testimony, **like the other four prosecution eyewitnesses in 1982**, Robert Harkins stated that the killer shot Officer Faulkner in the face, and then collapsed on the pavement next to Officer Faulkner's dead body. This is the exact spot that police apprehended Mumia Abu-Jamal, with his gun at his side, less than 1 minute after the shooting. The Defense made no attempt to counter the devastating testimony given by Robert Harkins, **their own eyewitness**. Robert Harkins was the only Defense witness at the 1995 PCRA Appeals Hearing that was deemed by the court to have testified "credibly." Robert Harkins's testimony is virtually identical to the testimony given by the Prosecution's 4 eyewitnesses, in 1982.

#### THE SIXTH EYEWITNESS TO THE MURDER

There is no doubt that Mr. Jamal's brother William Cook knows who the killer is.

Several eyewitnesses placed Mr. Cook standing within inches of Officer Faulkner when he was shot. When police arrived Mr. Cook exclaimed, "I ain't got nothin to do with this." He didn't say, my brother and I ain't got nothin to do with this, nor did he say the guy who shot the officer ran away. (6-19-82, TRIAL RECORD PG. 131)

William Cook was not called by the Defense to testify in his brother's behalf in 1982. At the 1995 PCRA hearing, the Defense claimed that Mr. Cook would appear to clear his brother's name. However, William Cook failed to appear at the courtroom. To this day, he has refused to offer any testimony, to counter the damning testimony offered by the other 5 eyewitnesses.

#### 2) MUMIA ABU-JAMAL WAS IDENTIFIED AS THE KILLER AT THE SCENE

Because of his wound, Jamal was only able to move a few steps away from Officer Faulkner's body, where he collapsed on the

curb. This fact is verified by the testimony of 4 of the five eyewitnesses to Officer Faulkner's murder. The Police Radio Tape Transmittal establishes, that after pulling William Cook's vehicle over and prior to exiting his patrol car, Officer Faulkner requested backup at 3:51:08 AM. The Radio Transmission Log also verifies, that the first police vehicle arrived on the scene at 3:52:27 AM. Just 90 seconds after Officer Faulkner exited his vehicle, to question William Cook.

What this means is, that from the time Jamal shot Officer Faulkner and fell to the ground, it was only a matter of seconds before he was spotted sitting on the pavement next to Officer Faulkner's body, by Officers Shoemaker and Forbes, who were the first officers on the scene. When Shoemaker ordered Jamal to "freeze," testimony verifies, that instead of surrendering Jamal attempted to raise his gun and fire at them. As Mumia Abu-Jamal attempted to reach his gun, Officer Shoemaker, choosing not to use deadly force to subdue him, kicked Jamal in the throat and then kicked the gun away from him. After a violent struggle, the arresting officers handcuffed Jamal and placed him in the back of a police van. (6-19-82, TRIAL RECORD PG. 116)

Eyewitnesses Chobert, White and Magilton were asked to look at Mr. Jamal as he lay inside the wagon. They each physically identified Mumia Abu-Jamal, as the man they had just seen run across the street, and then shoot Officer Faulkner. At trial, these individuals again identified Jamal as the killer and Chobert stating, that he never lost sight of Mr. Jamal from the moment he shot Faulkner until he was placed in the van. (6-19-82, TRIAL RECORD PG. 210-213)

### **3) THE BALLISTICS EVIDENCE**

When apprehended, Mumia Abu-Jamal was wearing an empty shoulder holster. A gun owned by Jamal and registered in his name was found at his side. At the 1982 trial, a storeowner testified that he had sold Jamal this gun and he produced a sales receipt with the guns serial number and Jamal's signature on it to verify this fact. The gun found on the ground next to Mumia Abu Jamal when he was apprehended was a five shot .38 Caliber Charter Arms Revolver. Jamal's gun contained five (5) spent casings. Four of these casings were from unique Federal Arms .38 Caliber Special +P ammunition, which had a hollow base. This is the exact brand (Federal Arms), type (Special High Velocity Hollow Based +P) and caliber (.38) of bullet removed from Officer Faulkner's brain. In 1981, Federal Arms was the only manufacturer of +P ammunition with a hollow base. Additionally, though it could not be matched identically to Jamal's gun to the exclusion of all others, the bullet that killed Officer

Faulkner had the same general riffling characteristics (8 lands and grooves and a right hand direction of twist) etched into it's surface, as those found in the barrel of Mumia Abu-Jamal's gun. (6-23-82, TRIAL RECORD PG. 6.167-6.168)

It sounds strange, but George Fassnacht, who was Jamal's ballistics expert in both 1982 and in 1995, has continually refused to test the fatal bullet, and has never offered any evidence in the courtroom to counter these facts.

*NOTE: According to the ballistics specialists we have spoken to and the Prosecution's expert Anthony Paul, the +P bullet with a hollow base was rarely seen in 1981. At that time, the only manufacturer making a +P bullet, with a hollow base, was Federal Arms. The +P is a high velocity bullet that carries an extra heavy load of gunpowder. They are so devastating when they hit their target, that police officers are restricted from using them.*

In addition to ballistics tests that were run on the fatal bullet, tests were also conducted on the bullet that was removed from Mumia Abu-Jamal's body. It was unequivocally determined, that this bullet, was fired from Officer Faulkner's service revolver.

Prior to the 1982 trial, tests to detect the presence of "primer lead and products of combustion" were performed on the jackets worn by both, Mumia Abu-Jamal and Officer Faulkner. The test on each jacket registered positive for primer lead (gunpowder residue). At the trial, prosecution ballistics expert Dr. Charles Tumosa testified that the positive result of the test that was run on Jamal's jacket, meant that the person who shot Mr. Jamal in the chest (Officer Faulkner) had to have been no more than 24 inches away from him when they fired. Dr. Tumosa also testified to the fact, that the person firing the shot that struck Faulkner in the upper-back could not have been more than 24 inches away from Faulkner when they fired. (6-26-82, T.R. 16-17)

Though he had worked closely with them prior to the trial, Mumia Abu-Jamal and his attorney Anthony Jackson never asked the court to allocate funds to allow their ballistics expert, George Fassnacht, to testify in their behalf during the 1982 trial. Additionally, Jamal and Jackson never petitioned the court to grant them the assistance or testimony of a forensic pathologist during the 1982 trial.

#### **4) MUMIA ABU JAMAL CONFESSED TO THE KILLING.**

In their testimony, several witnesses stated that Mr. Jamal was violently resisting police when he was brought into Thomas Jefferson Hospital. Three people, including two police officers and a hospital security guard, twice heard Jamal shout out, "I shot the Mother Fucker, and I hope the Mother Fucker dies." Two of these individuals, police officers Gary Bell and Gary Wakschul, each reported what they had heard two months after the incident. The

third, security guard Priscilla Durham, reported hearing the same outburst to her supervisor the day after the shooting. In 1982, the jury heard Jamal's attorney argue that the testimony confirming the confession was untrue, because the two police officers came forward so long after the shooting, and because Officer Wakschul had written in a report, that "the Negro male made no comments." However, the Defense had no explanation to counter the testimony of Priscilla Durham. Ms. Durham was a security guard who was employed by the hospital the morning of December 9, 1981. At the 1982 trial, Ms. Durham testified that she had reported what she had heard to her hospital supervisor, in writing, the day after the shooting. She stated that she had heard both of Jamal's incriminating outbursts and that he was "at her feet" when he made them.

Priscilla Durham's 1982 testimony is as follows:

Ms. Durham: "At this time I didn't know [who he was]...all I did was hear him say, I shot the mother fucker and I hope the mother fucker dies." (6-24-82, T.R. 28)

Ms. Durham was asked where Jamal was when he made his incriminating outburst. She replied:

"He was at my feet." (6-24-82, T.R. 28)

In reference to her report about this incident, Priscilla Durham states the following:

Ms. Durham: "I had already given a statement."

Mr. Jackson: "To whom?"

Ms. Durham: "Jefferson [Hospital] investigators."

Mr. Jackson: "When did you give that [statement]?"

Ms. Durham: "The next day."

(6-24-82, T.R. 47)

The hospital report referred to by Ms. Durham was produced at trial, verifying her testimony. (6-24-82, TRIAL RECORD, PG. 47)

### **MUMIA ABU-JAMAL ATTEMPTED TO UNDERMINE HIS OWN TRIAL**

During the 1982 trial, the jury watched as Mumia Abu-Jamal, with loud outbursts and verbal threats, repeatedly disrupted the trial proceedings on a daily basis. Mr. Jamal had initially agreed to be represented by Anthony Jackson, a formally trained attorney, suddenly he preempted Mr. Jackson's defense by deciding to represent himself. During jury selection, Jamal again changed direction; demanding to have John Africa of MOVE, "represent him." On the first day of trial, Judge Albert Sabo once again allowed Jamal to represent himself. Instead of doing so, Mr. Jamal first refused to speak at all, then he did another about face, and again demanded to have Move's founder, John Africa, "represent

him". As he had during jury selection, Judge Albert Sabo refused to allow Mr. Africa, who was a non-lawyer with no standing in the court, to function as Jamal's counsel. In the midst of the 1982 trial, the Supreme Court was asked to review this decision. Judge Sabo's decision was upheld.

Proclaiming that he was "following the directives of John Africa," Mumia Abu-Jamal intentionally and regularly disrupted the court proceedings, or refused to participate in them altogether, by refusing to speak. In a fruitless effort to maintain order, Judge Albert Sabo had Jamal forcibly removed from the courtroom no less than 13 times during the course of the trial. After each removal, Sabo asked Jamal if he would "behave" himself. Each time, he received an affirmative response from Jamal. Judge Sabo would again permit him back into the courtroom, only to have Jamal renew his disruptions, and be removed once again. Adding to the consternation in the courtroom, Jamal, refused to aid Anthony Jackson in his efforts to mount a defense in his behalf. Once Jamal decided to represent himself, Mr. Jackson had relinquished all statements and legal documents to him. When Jackson was reinstated as "lead counsel," Jackson claims that Jamal failed to return many of these documents to him. As the trial concluded, Mumia Abu-Jamal refused to give Anthony Jackson the names of the individuals he intended to call as his character witnesses, leaving Jackson unprepared to question them. Before the jury, Jamal repeatedly berated Mr. Jackson, once calling the black Anthony Jackson, "a court appointed baboon." In an article written for the Philadelphia Inquirer, in 1982, reporter Marc Coffman wrote of Mumia Abu-Jamal's actions in the courtroom, "his behavior is as bizarre as it is suicidal." In his 1995 PCRA testimony, Anthony Jackson acknowledged, that by the end of the 1982 trial, his working relationship with Jamal had become extremely strained. The record reflects that by this time, Mumia Abu-Jamal was, for the most part, calling the shots as to how his defense would proceed. Mr. Jackson has stated, that he did his best to hold things together, but Mr. Jamal proceeded as he saw fit, often against Jackson's advice.

In the end, by following the offbeat legal tactics of John Africa, Mumia Abu-Jamal likely sealed his own fate. His intentionally disruptive actions and overtly political statements in the courtroom, which appeared to be intended to paint him the victim, and gain sympathy from the jury, only served to undermine his defense.

***NOTE:** Mumia Abu-Jamal and his current attorneys now seek a new trial, claiming that his 1982 trial was "unfair," and that Anthony Jackson was "incompetent."*

## **THE CONVICTION AND SENTENCING OF MUMIA ABU-JAMAL**

Due to the preponderance of evidence against him, it took the jury just three hours to unanimously convict Mumia Abu-Jamal of Officer Daniel Faulkner's murder.

Immediately preceding his sentencing, and against Anthony Jackson's advice not to do so, Mumia Abu-Jamal freely chose to read a lengthy statement directly to the jury that was about to determine his sentence. In his recklessly worded statement, Jamal challenged the right of the court to try him, refuted the validity of the jury's decision to convict him, and, in what is to date the closest statement he has ever made alleging that he did not shoot Officer Daniel Faulkner, he proclaimed that he was "innocent of the charges for which he had been convicted, no matter what you people [the jury] think." Jamal also took this opportunity to once again overtly proclaim his political and philosophical affiliation with John Africa and the violent MOVE organization. This is an excerpt from the statement read by Mumia Abu-Jamal to the jury that was about to sentence him:

"This decision today proves neither my guilt nor my innocence. It proves merely that the system is finished. Babylon is falling. Long live MOVE. Long live John Africa." (7-3-82, T.R. 16)

### **MUMIA ABU-JAMAL THREATENED JUDGE ALBERT SABO**

Mumia Abu-Jamal was unanimously convicted of First Degree Murder on July 2, 1982. He was sentenced to death the following day. Several months later, in May 1983, he was formally sentenced in a proceeding before Judge Albert Sabo.

Upon hearing his sentence, Mr. Jamal, the man described as "peaceful" by his 15 character witnesses, appeared to threaten Judge Albert Sabo. Jamal stated:

"I'm going to tell you one thing: You have just sentenced yourself, just like Judge Malmed, just like Malcolm, just like Merna Marshal, and every other Judge who dares to sit up there and act like you got some justice. You are wrong. You have just been sentenced to death. You have just been convicted." (5-25-83, T.R. PG.165)

## **PROCEEDINGS SINCE THE CONCLUSION OF THE TRIAL**

In 1989, The Pennsylvania State Supreme Court denied Jamal's direct appeal for release, or a new trial.

In 1990, the U.S. Supreme Court declined to review Jamal's direct appeal.

On October 29, 1998, after 3 years of PCRA appeals hearings, the 7 justices of the Pennsylvania State Supreme Court unanimously

and resoundingly denied Mr. Jamal's appeal for release or a new trial. Frequently chastising Jamal and his attorneys for misstating the record, The Supreme Court called many of their arguments, ludicrous and absurd. Additionally, the State Supreme Court upheld the fairness of Mr. Jamal's 1982 trial, specifically supporting the actions taken by Judge Albert Sabo, to maintain order in his courtroom.

In the numerous appeals heard since his conviction in 1982, no less than 13 different appellate court judges have reviewed the extensive claims of innocence, police coercion and court wrongdoing, made by Mumia Abu-Jamal, and his legion of attorneys. To date, there has not been a single judge that has agreed with these allegations.

Mr. Jamal is now beginning the federal appeals process. In late spring 1999, Jamal's attorneys filed a Petition for a Writ of Certiorari to the United States Supreme Court. The Supreme Court will review this petition late in 1999. Theoretically, Jamal has until October 1999 to file his appeal to the Federal District Appeals Court. His Federal appeals are projected to take several years to complete. It is also anticipated that Pennsylvania's current Governor, Tom Ridge, will re-instate the Death Warrant that Judge Sabo was required to "stay" in 1995. This is a symbolic act as long as Jamal has pending appeals in Federal Court, but it could serve to hasten the filing of his Federal Appeals.

## **MYTH #1**

According to the Defense, the bullet removed from Officer Faulkner's brain was a .44 caliber bullet. Mr. Jamal's gun, which was found next to him at the crime scene, was a .38 caliber revolver. Therefore, Jamal's supporters argue, he couldn't have shot Officer Faulkner.

The basis for this myth is a note made by Assistant Medical Examiner Dr. James Hoyer, which accidentally found its way into the 1981 Medical Examiners report. The note on which the defense bases its contention simply states, "44 Cal". Having measured the bullet, with nothing more than a common ruler, Dr. Hoyer observed in his note that the bullet which killed Officer Faulkner might have been .44 caliber.

Recently Jamal's attorneys have altered this Myth. Because Dr. Hoyer disavowed his 1981 note in which he estimated caliber of the bullet, which was this myth's original basis, in his 1995 PCRA testimony. The defense now claims that there may be several

fragments of the bullet "missing" and that if these fragments were the correct size and weight, they would prove that the bullet was .44 caliber.

## **BRIEF REBUTTAL**

Ballistics tests verify that Officer Faulkner was killed by a .38 Caliber Federal Arms Special +P bullet. It's been proven that the gun used to kill Officer Faulkner had the same general rifling characteristics that Mr. Jamal's Charter Arms .38 Caliber handgun has. Further, Mr. Jamal's own ballistics expert, George Fassnacht, has agreed under oath that the bullet that killed Officer Faulkner was not .44 caliber and was most likely a .38.

The only shred of documentation inferring the bullet that killed Officer Faulkner was .44 caliber, was Dr. James Hoyer's hand written notation to himself. This notation made on a piece of scrap paper by Dr. Hoyer and simply stated "44 cal". Dr. Hoyer, a medical doctor who had no formal ballistics training, testified in 1995 that his notation was not meant to be part of his final report and that he had intended to discard it.

Dr. Hoyer also stated that he had measured the badly distorted bullet with a standard ruler, which he acknowledged was a "highly inaccurate instrument." He further admitted that, in retrospect, the measurement was consistent with a .38 caliber bullet, not a .44. Dr. Hoyer also stated that when he made his erroneous observation, he had no idea that the bullet he was measuring was +P ammunition. This unique type of high velocity ammunition has a hollow base that expands on impact. He stated that had he known this, he would not have guessed that the bullet was ".44 Cal". Dr. Hoyer further stated that he has no formal ballistics training. Therefore, he states, he wasn't qualified to make his observation in 1981.

*Finally, George Fassnacht, Jamal's own ballistics expert has twice stated that the bullet was not a .44 Caliber bullet.*

Should someone think that the gun found next to Jamal at the crime scene, was thrown there by someone else to frame Mr. Jamal, they would be wrong. It should be noted that Mumia Abu-Jamal was wearing an empty shoulder holster when the police apprehended him, and the gun found next to him was legally purchased by him and registered in his name.

## **FACTS SUPPORTING OUR REBUTTAL**

As stated above, the original notion that the bullet was .44 caliber came from a note made by an Assistant Medical examiner, not the ballistics expert. Leonard Weinglass, Jamal's current lead defense attorney, regularly seizes on this otherwise meaningless notation and twists it's significance to claim that the bullet was .44 caliber.

At the 1995 PCRA appeals hearing, Mr. Weinglass asked Doctor Hoyer about his notation:

Weinglass, "What is it doctor?"

Dr. Hoyer: "It's a notation I made on a piece of paper that was normally, normally discarded." (8-9-95 T.R. 186)

Later in his testimony Dr. Hoyer is asked by Assistant DA Arleen Fisk if he has ever had any formal ballistics training:

ADA Fisk: "Am I correct sir, that you've never had training in the field of ballistics and firearms identification?"

Dr. Hoyer: "I've never had formal training in that, that is correct."

Ms. Fisk: "And am I correct that in 1981 you were by no means an expert in that field?"

Dr. Hoyer: "That is correct."

Ms. Fisk: "Would I be correct that any statement by you as to the caliber of any projectile would merely be a lay guess and not that, not the valuation of an expert in the field of ballistics?"

Dr. Hoyer: "Correct." (8-9-95 T.R. 191-192)

Later Assistant DA Arlene Fisk also asks Dr. Hoyer what instrument he used to make is observation.

Ms. Fisk: "Dr. Hoyer what method did you use to measure items and dimensions you gave in reports back in December, 1981?"

Dr. Hoyer: "I would have placed the item against a millimeter ruler and measured it visually." (8-9-95 T.R. 199)

#### WHAT DID THE BALLISTICS REPORTS REVEAL ABOUT THE GUN AND BULLET?

In 1982, the prosecution's criminalist, Anthony Paul, was asked if the bullet removed from Officer Faulkner's brain was consistent with having been fired from a Charter Arms .38 caliber revolver, which is the type of gun owned by Mr. Jamal and found next to him at the scene.

Mr. Paul states: "It's possible to say that it [the bullet which killed Officer Faulkner] was fired from a revolver with that type of rifling, with the Charter Arms type of rifling." (6-23-82 T.R. 6.110)

Later, Anthony Jackson asks Anthony Paul if the general characteristics of the bullet removed from Officer Faulkner's brain matched the pattern found in Mr. Jamal's gun. Mr. Paul states: "The general characteristics being part of the eight lands and grooves and a right hand direction of twist, you have a part of that [bullet] still exposed with sufficient quantity to be able to say that a firearm rifled with eight lands and grooves with a right hand direction of twist discharged that projectile." (6-23-82 T.R. 6.168)

Mr. Paul goes on to state that there are thousands of .38 caliber handguns with eight lands and grooves and a right hand twist and that the bullet cannot be matched identically to Jamal's gun, to the exclusion of all others. However, he stresses the fact that there was

only one gun with these characteristics found at the crime scene -- the gun owned by Mr. Jamal. This is the same gun that was registered in Jamal's name and that was found next to him at the crime scene less than a minute after the shooting.

*In addition to matching exactly the general rifling characteristics of the gun used to kill Officer Faulkner, Mr. Jamal's 5 shot Carter Arms handgun contained 5 spent casings from .38 caliber high velocity Special +P ammunition. Of the shells found in Jamal's gun, all were +P ammunition and 4 out of 5 were manufactured by Federal Arms. In 1981, Federal Arms was the only brand of +P ammunition that had a hollow base. Additionally, Anthony Paul acknowledged that the +P bullet was rarely seen in 1981. It is a unique bullet with an extra heavy load of gunpowder that is so devastating when it hits its target, that police departments are restricted from using it.*

*Ballistics tests, which have never been refuted, verify that the bullet that killed Officer Faulkner was .38 caliber Federal Arms brand +P ammunition, with a hollow base. This fact, combined with the fact that this same bullet had the identical general rifling characteristics found in the barrel of Jamal's gun (8 lands and grooves and a right hand direction of twist), is evidence that devastates the argument that another gun was used to kill Officer Faulkner.*

#### HOW CAN WE BE SURE THAT SOMEONE ELSE DIDN'T THROW THE GUN ON THE GROUND NEXT TO MUMIA?

Anyone who doubts that the gun found next to Jamal was actually his should note that it was purchased by Mumia Abu Jamal and registered to him. A storeowner testified in 1982 that he sold Mr. Jamal this exact gun. He also produced a purchase receipt with Mr. Jamal's signature on it and the serial number of the gun to verify his testimony. Additionally, Mr. Jamal has admitted on the record that he was wearing an empty shoulder holster when he was apprehended and his attorney's have never disavowed Jamal's ownership of the gun.

#### THE DEFENSE BALLISTICS INFORMATION

*It sounds absurd, but, to date, the defense ballistics expert George Fassnacht, the same ballistics expert Jamal had at the 1982 trial, has refused to even look at the physical evidence relating to the bullet that killed Officer Faulkner. Even though the burden of proof now rests with Mr. Jamal and his attorneys, they have never tested the bullet to prove their .44 caliber theory. This gives us some insight into the validity of the Defense ballistics claims. To evidence this, in July 1995, Assistant District Attorney Joey Grant asked Mr. Fassnacht:*

*ADA Grant: "Well, you have opined that since you didn't have a chance to look at the evidence, test the evidence [in 1981], all you did was read a report. Well, we [now] have what you didn't have in 1981. Would you be willing to try a hand at it now?"*

*Mr. Fassnacht: "Would I be willing to reexamine this evidence? No, I wouldn't" (8-2-95 T.R. 150)*

Further, Fassnacht has never entered any additional defense ballistics evidence on Jamal's behalf to support the defense' self serving claim that the bullet was .44 caliber, nor has he ever definitively stated under oath what he believes the caliber of the bullet to be.

What Mr. Fassnacht did agree to while under oath at the 1995 PCRA hearing is this. When asked by ADA Grant:

*ADA Grant: "In any event, no matter whether that explains it or not, you know from your own expertise that this is in no way close to being a .44 caliber bullet, don't you?"*

*Mr. Fassnacht replies, "Yes." (8-2-95, T.R. 158)*

Fassnacht repeated his belief that the bullet was not .44 caliber again when he was asked by the Assistant DA Grant:

*ADA Grant: "Considering what you read, [the ballistics reports], you must admit to a reasonable degree of scientific certainty that a .44 caliber that [bullet] was not?"*

*George Fassnacht (Jamal's own ballistics experts responds):*  
"YES."

*(8-2-95 T.R.160)*

### THE DEFENSE TACTIC

In 1981, we find that Dr. Hoyer, the Medical Examiner, makes a layman's observation regarding the caliber of the bullet, which he later disavows as being inaccurate. Years later, we now have Mr. Weinglass playing the roll of amateur ballistics expert. His allegation that the bullet was .44 caliber contradicts not only the prosecutions trained ballistics expert, but also the observations of his own defense ballistics expert!

Beyond repeating the allegations made outside the courtroom by Leonard Weinglass, it's unclear how Mr. Jamal's supporters can argue that the caliber of the bullet was anything but a .38. It's especially astounding when Mr. Jamal's own ballistics expert is unwilling to make this same argument in Jamal's behalf in the courtroom.

Although given ample opportunity in 1995, the defense never attempted to refute the official test results with alternative ballistics results of their own.

### THE NEW DEFENSE BULLET THEORY

Because the testimony of their own ballistics expert has destroyed their myth, the Defense now has another spin on the bullet theory.

They claim that there may be a fragment or even multiple fragments of the fatal bullet missing. Though they have never offered any evidence to prove this in court, the Defense persists in claiming that if this allegedly missing fragment just happened to be the right size, it would verify that the bullet was .44 caliber. The defense has a problem with their new Myth. Aside from the being absolutely no facts to support it, it directly contradicts all official ballistics tests, as well as the expert testimony of not only of the prosecution's ballistics expert, but their own ballistics expert George Fassnacht! It's our belief that before the Defense can claim that something is missing, they must first look to see if it's there or not.

### CONCLUSION REGARDING THE CALIBER OF THE BULLET

Due to the fact that the defense ballistics expert, Mr. Fassnacht, has continually refused to look at any physical ballistics evidence (the bullet itself and a fragment of the bullet), and because he has never entered any new evidence to establish the accuracy of the Defense's claim, it's unclear what the Defense bases their new contention on.

Until the defense produces credible evidence in the courtroom verifying that the bullet which killed Officer Faulkner was .44 caliber or that a fragment of the bullet is missing, the official facts used by appellate courts in the future will show that the bullet was .38 caliber.

## **MYTH #2**

Several "eye witnesses" saw somebody else shoot Officer Faulkner, then run down the street into the night.

In an article he wrote, The Trial of Mumia Abu Jamal, Leonard Weinglass states, "In all, four witnesses situated in four separate locations on the street- none of whom knew each other or Mumia- reported seeing the shooter flee, and all had him going in precisely the same direction." The four individuals that Mr. Weinglass regularly claims as "eyewitnesses" are: Deborah Kordansky, Robert Chobert, Veronica Jones and Desie Hightower. Each will be discussed later in this section.

In his book, "Race For Justice" Mr. Weinglass states, "Due to Commonwealth misconduct and the courts rulings, the true facts of

the case- that Mr. Jamal was shot by Officer Faulkner as Mr. Jamal approached the scene, and that a third black man then shot Officer Faulkner and fled the scene- were suppressed and not established." In Mr. Weinglass' public presentations as well as in his writings, he states that a "mystery man" shot Officer Faulkner, ran down Locust Street, entered a small alleyway and fled into the darkness. The sole basis for Mr. Weinglass' theory is his allegation that the four individuals listed above, each of whom Weinglass claims was "on the street in different locations", testified to seeing another man do the shooting and run away.

### **BRIEF REBUTTAL**

**It's important to note that to date, this theory, which we will label as the "Running Man Myth" is the only theory ever presented on the record by the Defense that purports to show Mr. Jamal's innocence.** This myth was highlighted in a 1996 HBO television documentary, "Mumia Abu Jamal, A Case for Reasonable Doubt". The defense has never produced any credible evidence in the courtroom to back their "Running Man Myth". When the testimony of the defenses four "eyewitnesses" is reviewed, it becomes very apparent that the "Running Man Myth" is quite simply, a hoax. When reviewed, the record reflects that only one of Mr. Weinglass' four so-called "eyewitnesses" has ever stated or testified that they actually witnessed the shooting! That individual was Robert Chobert, was a prosecution witness. In his original statement given to police only 1/2 hour after the shooting Robert Chobert stated, "*I looked up and saw the black male start running towards 12th St. He didn't get far, maybe thirty or thirty-five steps and then he fell..*" (Chobert Statement, 12-9-81) Mr. Chobert has identified Mumia Abu Jamal as the killer no less than three times. The other three individuals alleged to be "eyewitnesses" by Mr. Weinglass, each of whom he claims was "on the street" when in fact they were not, have all stated under oath that they were located in positions that made it impossible for them to see the shooting. These three individuals are:

1. Debra Kordansky, who *was in her bedroom watching TV when the shooting occurred.* She stated she didn't go to her window until drawn there by the flashing lights of the police cars that had already arrived on the scene when she looked out her window. She then saw someone run. Ms. Kordansky specifically stated that this person *was not the shooter and that they ran after police had already arrived.*
2. Desie Hightower stated that he *was down the street, behind a building in a parking lot, getting into a car when the shooting*

*occurred. He was asked by police if he could identify Mr. Jamal as the shooter, but Mr. Hightower stated in his testimony, "I couldn't say, because I didn't see the officer actually shot." (6-28-82, T.R. 28.131)*

3. Veronica Jones, stated that she *was over 2 blocks away, around a corner and behind a building when Officer Faulkner was shot.* She testified that she "waited for a few minutes" before looking around the corner to see what happened and she then saw two men approach Officer Faulkner, who was already dead. Ms. Jones stated in her 1982 testimony that these men "never got close enough". In her 1996 PCRA testimony she also stated, *"I was not there, I did not see him [the shooter]."* (10-1-96, T.R. 24) Mr. Weinglass stated the general outline of the "Running Man Myth" for the record in his 1995 PCRA closing argument. Despite having just heard the testimony of the four individuals listed above, he still tried to pass his "Running Man Myth" off as fact. This is Mr. Weinglass' interpretation of the testimony of the individuals listed above:

"... As soon as the police arrived that night, first thing he [Chobert] says to the police, the guy ran away. The guy ran away. Mr. Jamal is lying on the sidewalk, practically near his cab. But the guy ran away. He [Chobert] repeats it within an hour in a written statement in the Police Department saying the guy ran away 35 steps down the street on the south side going east on Locust. The same that Debbie Kordansky says, the same that Veronica Jones says, the same that Desie Hightower says. Four people. And then added to by Singeltary as the fifth." (9-11-95, T.R. 59)

## **FACTS SUPPORTING OUR REBUTTAL**

### **NOTE:**

Please read the information below slowly and carefully. It's critical to understand the distinction between the four individuals that the defense labels as "eyewitnesses" and the five individuals who have testified in court to seeing the shooting, and then were deemed to be credible eyewitnesses to the actual shooting by the court in 1995.

When espousing the "Running Man Myth", Jamal supporters simply ignore the fact that under oath, five actual eyewitnesses to the shooting each deemed credible by the court, have offered extensive and consistent testimony stating that they witnessed the following sequence of events regarding the murder of Officer Daniel Faulkner on December 9<sup>th</sup>, 1981.

Michael Scanlon, Robert Chobert, Cynthia White, Robert Harkins and Albert Magelton stated under oath that they saw the man who murdered Officer Faulkner run from the parking lot across the street, the same lot Jamal's empty taxi cab was found in. The murderer shot Officer Faulkner in the back from close range. He

then stood over Faulkner, fired several more times, bent down, put his gun inches from Officer Faulkner's face and fired the fatal shot. The killer then staggered a short distance and collapsed on the curb. Moments later, they saw the shooter apprehended by police and placed in a police van.

Many of these credible eyewitnesses said they never lost sight of the killer after the final shots were fired and two of them specifically identified Mumia Abu Jamal to police at the crime scene immediately after the shooting, as the man they saw shoot Officer Faulkner. Several of these "credible eyewitnesses" also identified Jamal as the murderer at the original trial in 1982, and again at the 1995 PCRA hearing.

#### THE DEFENSE PLOY

To counter the devastating amount of testimony delivered against their client by the credible eyewitnesses, the defense has been forced to create their own fictitious scenario about what happened the morning of December 9, 1981. Their formula for deception is quite simple and very clear to anyone with access to the court transcripts and the statements made to police immediately after the shooting.

First, the defense takes small segments of testimony out of context and strings them together to paint a distorted picture of the events that morning. This process conveniently produces an easy to understand, believable and emotionally compelling story that points to Mr. Jamal's innocence for the unknowing listener.

*The foundation for the defense ploy is the fact that some witnesses, each of whom Mr. Weinglass labels an "eyewitness", have actually stated they saw "somebody" (not the shooter) "running" (not running away), following the shooting of Officer Faulkner. Each of these alleged "eyewitnesses" has admitted under oath that they arrived at the scene several minutes after the shooting stopped and none of them has ever stated they saw the actual shooting.*

Knowing they would rarely be challenged outside the courtroom, the Defense spins these snippets of testimony to their client's advantage. They then purport that the four individuals they label as eyewitnesses have testified that they saw "a third black man shoot Officer Faulkner and flee the scene". This story has been repeated and elaborated upon by countless so-called "journalists" and Jamal supporters. When reviewed, the court transcripts as well as the original statements given to police by these individuals, clearly reveal that not one of the defense' alleged "eyewitnesses" has actually said what Mr. Weinglass claims they said in his writings.

#### **DEFENSE ALLEGED #1 VERONICA JONES**

The first individual that the defense has labeled as an "eyewitness" is Veronica Jones. She was a prostitute working the neighborhood around 13<sup>th</sup> and Locust that night.

Ms. Jones testified as a defense witness at the 1982 trial and again in a 1996 supplemental PCRA hearing that was convened specifically to hear her testimony.

Evidence was produced in 1996 to cast doubt on Ms. Jones credibility as a witness. This evidence verified that in addition to her numerous aliases, Ms. Jones has used several false social security numbers and that she is a felon, convicted of welfare fraud. At the time she testified in 1996, Ms. Jones had a pending warrant for her arrest having been charged with passing a bad check in New Jersey. Ms. Jones has stated under oath several times that she was a heavy drug user throughout the 1980's.

The prosecution also produced information at the 1996 hearing indicating that Ms. Jones was very likely paid by someone for her newest testimony. Additionally, at this same hearing Ms. Jones was caught in several lies while on the witness stand by the Assistant District Attorney, regarding her arrest and pending trial for armed robbery in 1981.

Ms. Jones has admitted under oath several times to having been drinking heavily and smoking marijuana immediately prior to the shooting in 1981. At the 1982 trial while under oath, Jones stated, "Like I say I'd been drinking ..." (6-29-82 T.R. 114)

When Mr. McGill asked how much marijuana she had smoked that day she stated, " I wasn't counting when they passed it." (6-29-82 T.R. 155)

In reference to the night of the shooting, Ms. Jones further stated, "If you smoke marijuana all day by the end of the day, you be tired and you don't really be high."

McGill asks her, "Were you in fact smoking marijuana all day?" Jones replies, "On and off."

Mr. McGill asks, "So over the entire day [before the shooting] on and off you were smoking marijuana?"

Jones says, "Yes." (6-29-82 T.R. 156)

In her own words, Jones has repeatedly stated that she was not an eyewitness to the shooting. While testifying in the 1982 trial and looking at a diagram of the area, Assistant District Attorney Joe McGill asked Ms. Jones where she had been standing when she heard the first shots fired. Ms. Jones, stating that she was around the corner from the actual shooting replies, "I can't say I was directly on the corner, but if the Speedline is here, I was like a little behind the building that was on the corner." When asked what she did after hearing the final shot fired she replied, "I just came around the corner and looked." (6-29-82 T.R.98)

*Ms. Jones has changed her story regarding what she saw that morning no less than four times since 1981!*

*Throughout the numerous revisions to her testimony, Jones has always placed herself around a corner from the shooting, behind a building, nearly a block from the scene. She has stated repeatedly that she did not see the shooting. Ms. Jones has never stated that she saw the shooter run away, as the Defense would have us all believe.*

At the 1996 hearing when asked by Assistant DA Arleen Fisk, "And after you heard the shots is when you moved to the corner to look up the street; is that right?"

Jones: "Not right away."

ADA Fisk: "Not right away?"

Jones: "No. Common sense I am not going to stick my head around the corner right away. But I did a few minutes later." (10-1-96, T.R. 94)

#### WHAT DID VERONICA JONES SAY IN 1996?

In 1996 a supplemental (second) PCRA hearing was convened specifically to hear the fourth and newest version of Ms. Jones testimony. With great fanfare, Leonard Weinglass billed Veronica Jones as the "eyewitness" that would prove Mr. Jamal's innocence. To this day Mr. Weinglass claims that she "recanted her original testimony." The transcripts show that she actually changed only one minor portion of her extensive 1982 testimony.

While testifying in 1996, Ms. Jones also stated that after the shooting had stopped for a "couple of minutes", she looked around the corner up the unlit street. Having been drinking and smoking marijuana all day, and from a distance of 2 city blocks, she claims she saw two men approach the fallen officer from across the street and then "kinda jog away."

Jones had previously testified to seeing the same two men at the 1982 trial and in her original statement. In her original statement, Ms. Jones states, "After I saw the policeman fall down, I saw two black guys walk across Locust Street and then they started sort of jogging." (Jones statement 12-15-81)

In her 1982 testimony, Ms. Jones changed her story and stated that these two men just stood there. When asked in 1982 by Assistant District Attorney Mr. McGill, how close these two men had come to the fallen Officer Faulkner, who had already died instantly from his head wound as they approached, Ms. Jones stated, "Not close enough. Maybe two or three steps away." (8-29-82 T.R. 112)

Now in her 1996 testimony, she states that these two men were "kinda jogging away", not "kinda jogging" as stated in her original statement to police, or just standing there as she stated in her 1982 testimony. The Defense asserts that this change in Ms. Jones testimony was due to police intimidation and offered as her end of an alleged "deal to offer false testimony against Mr. Jamal." (SEE

## MYTH #6 IN REFERENCE TO THE ALLEGED POLICE COERCION OF JONES)

*Through each of the several versions of her story told by Ms. Jones, three things have remained constant. 1) Veronica Jones has never said is that these two men were involved in the crime in any way. 2) She has always stated that she did not see the actual shooting. 3) She has never offered any testimony damaging to Mr. Jamal. These facts completely undermine and invalidate the Defense argument.*

## IS VERONICA JONES' TESTIMONY IMPORTANT?

Ballistics results produced at the 1982 trial, none of which has ever been refuted by the defense, verify that Officer Faulkner was shot first in the back from less than two feet away, then in the head from a distance of less than a foot. He died instantly from his head wound. Ms. Jones own testimony refutes the idea that these men could have been the killers. She states that they never "get close enough, maybe 2 or 3 feet" and that she saw them "a few minutes" after the shooting stopped. It's therefore chronologically and physically impossible that one of these two men was the shooter as the Defense tells us.

The final blow to the Defense contention that Veronica Jones saw the shooter run away comes from her 1996 PCRA testimony. In 1996 Ms. Jones states, "I lied [in 1982] and said I didn't see the two men running away. Because I never pointed this man as the shooter because I was not there, I did not see him [the man who shot the officer]." (10-1-96, T.R. 100) In her own words, Ms. Jones has repeatedly verified that she was not an eyewitness to the crime and that she could not tell if the men she saw, whether they were running away or just standing there, were involved in the crime in any way. Therefore, her testimony is meaningless to either the Prosecution or the Defense.

## WHY DID MS. JONES CHANGE HER STORY A FOURTH TIME IN 1996?

It's important to note that Veronica Jones has never incriminated Mr. Jamal, nor has she exonerated him. In fact, the only pertinent testimony Ms. Jones offered at the original trial in 1982 was to say that minutes after the shooting stopped, she saw two men "kinda jogging". At the 1996 PCRA hearing, after repeated prompting from Mr. Weinglass, Ms. Jones changed one word of her testimony and said that she saw the two men "kinda jogging away." It may seem odd that after 14 years of silence, Ms. Jones suddenly decided to change her story again in 1996. However, at the 1996 hearing some light was shed on Ms. Jones motivation.

Evidence presented in September of 1996 verified that Ms. Jones first meet with Mr. Jamal's well financed attorneys in the spring of 1996. At the 1996 PCRA hearing, the prosecution verified that Ms. Jones and a person she described as her "man" had, for two years, failed to pay the rent on the apartment they lived in. Soon after her first meeting with Mr. Jamal's attorneys, Ms. Jones and her friend began making regular rent payments totaling several thousand dollars. These payments continued to be made in various amounts up to the day of Jones 1996 testimony. Not only were Ms. Jones and her male friend suddenly able to make the rent payments they had been delinquent on for nearly two years, they were also able to catch up on the back rent she owed as well? When asked by Assistant DA Arleen Fisk to explain this unusual situation, Ms. Jones said her boyfriend had received some "life insurance money". An alternative answer to Ms. Fisk's question was offered by one of Mr. Jamal's supporters from the back of the courtroom, when she taunted police sitting in the gallery by stating, "We got money coming in bucketful's and Veronica is gonna be taken care of."

#### THE DEFENSE PLOY

Ms. Jones fourth and newest version of events conveniently plays into the defense "police brutality and intimidation" story line. In 1996, Ms. Jones suddenly added the revelation that she had been threatened by police in 1982. She now claims that out of fear she gave allegedly false testimony against Mr. Jamal. During the 14 years leading up to her 1996 testimony, Ms. Jones had never before made any allegations of police intimidation to anyone, including the Public Defender who was representing her in her pending armed robbery case in 1982. This is the same armed robbery case that the alleged "deal" was pertinent to. Yet Jones never mentioned the alleged police intimidation or the offer of a "deal", to the very attorney that would have been involved in negotiating this alleged "deal" for her. It's curious that after meeting with Mr. Jamal's attorneys, Ms. Jones recollection of events 14 years earlier suddenly became much different than it had been originally.

With the intention of linking Jones to their other fabricated "eyewitnesses", the defense conveniently adapts and manipulates Ms. Jones statements. They simply ignore the fact that she has stated over and over again that she was around the corner when the fatal shot was fired, and that she never saw the shooting. They disregard the fact that the two men she saw "kinda jogging", by her own words, never got "close enough". In 1996 Ms. Jones is placed on the witness stand to add a new word to her original story, so she now says that she saw two men "kinda jogging away".

This done, Mr. Weinglass can neatly proclaim outside the courtroom that Ms. Jones really stated that she saw another man do the shooting and then run away. To add a sinister spin, the Defense also claims that police threatened and coerced Jones to obtain her original testimony. They do so without having offered a single shred of tangible evidence to support testimony given by the highly suspect Veronica Jones, over 14 years after the fact!

#### CONCLUSION REGARDING VERONICA JONES

It's quite possible that Ms. Jones may have seen two men "kinda jogging away" that morning. As stated the witnesses, there were numerous people running around the crime scene after the shooting stopped. From Jones position over 2 blocks away, she would have seen no less than 6 other witnesses (if you count the questionable defense witnesses) standing within 50 feet of the crime scene. It is quite likely that the two men seen by Jones were Desie Hightower and Robert Pigford, each of whom will be discussed later in this section. Additionally, this was an area of downtown Philadelphia that housed several after-hours clubs and was frequented by an assortment of prostitutes, drug dealers and other individuals who might have had any number of reasons to run away when police arrived after the shooting. This fact is clearly evidenced by the considerable number of witnesses to the crime. There is no doubt that there were many people present that morning when the shooting occurred. However not all of them stuck around long enough to give statements to the police.

The men Ms. Jones alleges she saw could have been nothing more than two individuals who approached the area of the shooting to get a closer look at what had happened or to offer assistance. Realizing that a Police Officer had been shot, one can only guess at the numerous reasons why they might have decided to "kinda jog away" before the police arrived.

Because Ms. Jones has never stated that she actually saw these two men shoot Officer Faulkner, her testimony is actually of little importance to either the prosecution or the defense.

#### **DEFENSE ALLEGED "EYEWITNESS" #2, DEBRA KORDANSKY**

The second individual labeled an "eyewitness" by the defense is Debra Kordansky.

According to her testimony, she was in her apartment down the street, sitting in her bedroom when the shooting occurred. Ms. Kordansky has never placed herself "on the street" as Mr. Weinglass erroneously claims in his writing.

In her original statement given to a Detective Morton at 4:56 Am on 12-9-81 only 1 hour after the shooting, Ms. Kordansky stated, "I

was watching TV and I heard about five gunshots some time between 3:45 and 4AM. The gunshots seemed to be in succession. I thought that it was fireworks. I didn't look out the window at first. I heard sirens a short time later. I saw about ten squad cars and two vans at 13th and Locust. I saw a man running on the south side of Locust Street." (Debra Kordansky statement to police 4:25 AM, 12-9-82)

While testifying at the 1995 PCRA hearing, Ms. Kordansky stated that she saw "a man running", (not running away), after the police had already arrived. Ms. Kordansky has never testified or stated that she witnessed the actual shooting, yet the Defense labels her an "eyewitness".

During the 1995 PCRA hearing while questioning Ms. Kordansky, Mr. Weinglass actually attempts to put words in her mouth that would aid in his "Running Man Myth."

Mr. Weinglass says to Ms. Kordansky, "Did they [the police] ever come back to you, to your recollection, and say to you what did you mean, Miss Kordansky, when you said you saw someone running south on Locust Street?" (8-3-95 T.R. 239)

At this point in the testimony, Assistant DA Joey Grant catches Mr. Weinglass and advises the court that Ms. Kordansky never said she saw a man running south on Locust. Rather she said she had seen a man running on the south side of Locust and she had also stated that she couldn't remember which direction he was running.

Undaunted, Mr. Weinglass then attempts to testify for Ms. Kordansky! He says to Kordansky, "It would help the police, would it not, and make sense that it would help the police, by saying, in effect, you saw someone running away who was probably the shooter and you were telling the police right then and there the shooter ran away?"

Kordansky- "I didn't say away!"

Weinglass- "You saw him running?"

Kordansky- "I saw someone running!"

Mr. Weinglass persists and says- "...you were directing them [the police] that the shooter ran away, and as a good citizen you are telling the police, you were directing that the shooter ran away, and as a good citizen, you are telling them I saw him run away and you ought to try to catch him. Isn't that why you told the police that?"

Ms. Kordansky replies, "No, I think the runner was part of the flow of the whole situation. There was a man killed, there's panic.

Someone was running, maybe two people are running, maybe three people are running, you know. There's police, there's news crews, Et. Cetera." (8-3-95 T.R. 248-249)

THE DEFENSE MISTATES THE RECORD AGAIN

In her 1995 testimony, given a month before the defense' closing argument, Ms. Kordansky sends a clear message to Mr. Weinglass that several minutes after the shooting stopped she saw a man (not the shooter) running in a direction she couldn't remember after police and news crews had already arrived. However, in their 1995 closing argument the defense ignored her actual statements and characterized Debra Kordansky's testimony as follows:  
"She [Ms. Kordansky] came in here and testified that in fact she had seen somebody run away. Run away down Locust Street going east on the south side of the street." (9-11-95, T.R.31)

#### THE DEFENSE ATTACKS DEBRA KORDANSKY

Because her 1995 testimony clarified her 1982 statement and made it unusable to support their "Running Man Myth", Mr. Weinglass found it necessary to attack Ms. Kordansky's credibility in the courtroom. On August 3<sup>rd</sup>, 1995 the following confrontation took place at the PCRA hearing:

Weinglass: "But in April of 1982, more than 13 years ago, you told the police who interviewed you why you couldn't remember it, and you said I have prejudice that affects my memory against and for police and black people. Is that right?"

Kordansky: "Can I tell you something else about my character? Because you seem to want to defame my character in implying that I would conspire to not reveal evidence because of prejudice. I was raped and I did have some problems, I felt discomfort with black people - with black men. But my honesty and my sense of what was true would preclude that. I would never lie and conspire! I don't know this man (indicating the Defendant) I just wouldn't do it."(8-3-95, T.R. 243-44)

In their factually flawed and inaccurate documentary, "A Case for Reasonable Doubt", HBO-TV incorrectly tries to use Debra Kordansky's statement to corroborate the testimony given by Desie Hightower, alleged eyewitness #3.

#### THE DEFENSE PLOY

Outside the courtroom Ms. Kordansky also receives the same treatment as the other witnesses. A few key words of her written statement to police are extracted ("I saw a man running.") They are then twisted to enhance the distorted picture the defense is attempting to paint.

To this day at his public presentations Mr. Weinglass alleges that Ms. Kordansky stated that she was an "eyewitness" to the shooting and that she saw another man shot Officer Faulkner and then run away "east on the south side of Locust Street." Mr. Weinglass persists in his ploy despite knowing quite well that Ms. Kordansky has testified that she was in her bedroom when the shooting occurred, that she never actually saw the shooting and that she saw a man running after the police and news crews had arrived!

### **DEFENSE ALLEGED "EYEWITNESS" #3, DESIE HIGHTOWER**

The third individual the defense has labeled as an "eyewitness" is Desie Hightower. In 1982, Mr. Hightower testified that he was down the street from the shooting. He said he was behind a building in a parking lot, getting into a car with his friend, Robert Pigford, when the shooting started. Originally Hightower said to Pigford, "I think it's firecrackers." (6-28-82, T.R. 28.122) When asked to describe what he had seen in 1982, Mr. Hightower stated, "We were in the parking lot [around the corner] getting into the car. I heard a series of three consecutive gunshots, then a pause, and one. All together I guess, it was five bullets." (6-28-82, T.R. 28.122)

Mr. Hightower stated that he and Mr. Pigford didn't have a direct line of vision to the crime scene because they had sought cover behind a wall when the shooting started and they remained there until the shooting stopped. When asked where he was when the shooting started Mr. Hightower stated, "I was in the parking lot. It's an old wall there at the parking lot, and I was looking around the wall." (6-28-82, T.R. 28.127)

In 1982, when asked by Assistant DA Joe McGill what they did after they realized shots were fired Hightower testified, "The fifth round went off, I looked around the corner to see if I seen anything happening." (6-28-82, T.R.28.122)

In his statement given at the scene at 5:20 Am to Detective Rollie Witcher, Mr. Pigford stated, "I remember seeing the cop get out of his car and approach the Volkswagen. After he approached the Volkswagen I didn't pay it much attention after that. I started going toward my car. My car was parked in the parking lot in the back of Whispers [a night club] and on the side of the other club. The other club is Sizlers. I was with my friend Desie Hightower. Both of us went back and I got in my car and turned on the ignition. Then I heard three shots at first. Then about four seconds after that I heard another one. Then about two seconds later I heard another shot. I got out of my car when I heard the three shots. Desie asked me what was that? Both of us went to the wall of the parking lot on the Locust St. side. I got to the wall first. I looked over the wall and I seen the police officer's car. The lights were still flashing just like when he first pulled up. When I didn't hear any more shots I ran from the wall and ran over to where the police officer was. I was right across the street from it all..."

(Robert Pigford Statement 12-9-81)

Having waited until quite some time after the shooting stopped before looking around the corner towards the crime scene, Mr.

Hightower states that he saw "somebody" running from the general area of the shooting. Nowhere in any of his extensive testimony, delivered on several occasions, has Mr. Hightower ever stated that this individual was the shooter. Nor has Mr. Hightower ever stated that this person was involved in the crime in any way.

FURTHER PROOF THAT DESIE HIGHTOWER WAS NOT AN EYEWITNESS.

Mr. Hightower has actually stated under oath several times that because he never saw the shooting he was unable to determine if the person he saw running was involved in the crime at all. He has also stated that the person he saw running could have been a woman.

When asked in 1982, "Before the police officers arrived did you see anyone leaving the scene?" Mr. Hightower replied, "I had seen somebody with a red and black sweater on. It was so - it was a very brief - I'd say I glanced for maybe a second or two." (6-28-82, T.R. 28.125)

Mr. Hightower also stated, "The first [person] was going in the opposite direction from where the incident happened at. It was apparently the friend had realized, it could have been a woman with braids in her hair. I really didn't pay that [person] much attention. The person looked to be about the height of five nine, five ten, somewhere around there." (6-28-82, T.R. 28.125)

In 1995, Mr. Jamal's investigator Robert Greer, was questioned by Assistant DA Joey Grant about a tape recorded interview Greer had with Mr. Hightower in 1982. Much like Debra Kordansky, Mr. Hightower states in this recorded conversation that he saw a person running after several police vehicles had already arrived at the crime scene!

At the PCRA hearing in 1995 Mr. Greer was asked by Assistant D.A. Joey Grant, "Wait a minute. The crime scene is almost at the midpoint directly between 12<sup>th</sup> and 13<sup>th</sup> [streets]? Greer: "Almost, yes."

Grant: "And he [the person Mr. Hightower saw running] is not even at 13<sup>th</sup> yet?"

Greer: "Okay." Grant: "So he [the person Mr. Hightower saw running] is more than half-a-block away [from the crime scene]?"

Greer: "All right." Grant: "All right. [In Mr. Hightower's statement to you he stated:] *I walked towards Whispers and by then it was flooded with other police officers and I saw somebody running past the hotel. I don't know if they were running because of gunshots or what. Now he [Mr. Hightower] didn't say I saw somebody running from the crime scene did he?"*

Greer: "Not in that description, no." (8-1-96, T.R. 224-25)

In reference to Mumia Abu Jamal as he lay in the van, Mr. Hightower testified that police at the scene asked him if he could identify Jamal as the shooter.

Mr. Hightower says they asked, "Is this the one who shot the officer?"

Mr. Hightower's response was to tell them, "*I couldn't say, because I didn't see the officer actually shot.*" (6-28-82, T.R. 28.131)

It's interesting however that at the 1995 PCRA hearing Assistant District Attorney Joey Grant noted for Mr. Hightower that his 1982 description of the person he saw running after the police had arrived, was an exact composite of Mr. Jamal the morning of the shooting. Mr. Hightower had no explanation for this, other than to say that he had seen Mr. Jamal when the police asked him if he could identify him as the shooter. This type of confusion on Mr. Hightower's part might also explain why he failed a polygraph examination he took in 1982.

#### THE DEFENSE PLOY

Again we find the Defense misrepresenting testimony to suit their needs. Mr. Hightower has stated the following under oath: 1) that he never witnessed the actual shooting 2) that the person he saw running could have been a woman 3) that he has no idea if that person was involved in the shooting in any way. Finally, he has stated to Mr. Greer Jamal's investigator, that this person he saw ran after the police had already arrived at the scene. However, as with Debra Kordansky, Mr. Weinglass persists in claiming that Mr. Hightower said that he "saw the shooter run away", in his writings and at his public presentations.

#### **NOTE:**

We should note that there is an additional person who claims to have seen another man do the shooting and then run away. This individual is William Dales Singeltary, and he is listed here as "eyewitness" #4. When convenient, Jamal's supporters and Mr. Weingalss will extract accept selected parts of Mr. Singeltary's unbelievable testimony to bolster their myth. Because of this, we felt it necessary to address Mr. Singeltary in this text also.

#### **DEFENSE ALLEGED "EYEWITNESS" #4, WILLIAM SINGELTARY**

As noted earlier, when convenient the defense will adopt the testimony of a witness who actually claims that he saw another man shoot Faulkner and run away.

William Dales Singeltary, wasn't called by the defense to testify at the original trial, but at the 1995 PCRA hearing, Judge Albert Sabo

requested that he testify. The unbelievable Mr. Singeltary was the key "witness" in the 1996 HBO documentary.

Jamal's own attorney has stated that Mr. Singeltary is not to be believed. Leonard Weinglass, while addressing the court in 1995, had this to say about William Singeltary: "*There is one additional witness who is referred to in the Petition [for appeal] which Counsel has had now for two months. And this is a witness [William Dales Singeltary] who is a person whose recollection of what happened on the night in question we believe to be not entirely accurate. We believe his recollection today is not entirely accurate. We believe his recollection which was given in a sworn statement in 1990 was not entirely accurate...*" (8-11-95, T.R. 9-10).

Despite clearly stating his personal doubts about Mr. Singeltary's credibility in the courtroom, Mr. Weinglass, HBO and Jamal's supporters are happy to embrace selected segments of Mr. Singeltary's incredible story as alleged key "evidence" to further their myth that someone else shot Officer Faulkner and then ran away.

#### WILLIAM SINGELTARY'S 1995 PCRA TESTIMONY

Mr. Singeltary did in fact state under oath that he saw another man shoot Officer Faulkner then run away. There are however numerous impossibilities to the events of December 9, 1981 as Mr. Singeltary describes them. Additionally, Mr. Singeltary's 1995 sworn testimony deviates significantly from a sworn statement he had given to Mr. Jamal's attorneys in 1990.

According to Singeltary's version of events, Officer Faulkner had already been shot "in the eye" by another man, when Mr. Jamal approached him to offer assistance. Singeltary testified that the shooter had exited the car Officer Faulkner had pulled over. This is the car that was being driven by Mr. Jamal's brother William Cook!

Mr. Singeltary claims Mr. Cook's mystery passenger approached Faulkner, fired one shot "into his eye", then threw the gun back into Cook's car and ran away down the street.

According to Singeltary, as Jamal approached to offer assistance, Officer Faulkner raised his hand and shot Mr. Jamal in the chest. Mr. Singeltary claims he personally approached Officer Faulkner at this point and heard him speak. He claims he heard Officer Faulkner say, "Get Maureen, get the children." (8-11-95, T.R. 270) Interestingly, Officer Faulkner had no children and Maureen is his wife. Over the years, she has been a frequent target of verbal attacks by Mr. Jamal's supporters.

In 1995, Mr. Singeltary also testified that he saw Mr. Jamal that night wearing a "Safari suit, like the Arabs wear." (8-11-95, T.R.

279) He claims that within seconds after the shooting he watched as "The captains and lieutenants got there before the police." (8-11-95, T.R.292) Amazingly, Mr. Singeltary claims these Captains and Lieutenants appeared not in cars, but on foot, from the shadows of the parking lot across the street. When asked by the Assistant D. A. what these Captains and Lieutenants did when the police vehicles and detectives arrived Singeltary said, "Once the uniformed officers arrived, they [the captains and lieutenants] disappeared." (8-11-95, T.R.295) Additionally, Mr. Singeltary was the only person among dozens of people at the crime scene that night to witness a helicopter, "circling overhead" illuminating the area immediately after the crime. (8-11-95, T.R. 294)

#### WHAT'S WRONG WITH SINGELTARY'S TESTIMONY?

Like Mr. Weinglass, having read Mr. Singeltary's amazing testimony, any reasonable person would have serious doubts about the accuracy of his recollections. The chain of events as he testified to them is absolutely impossible!

Both the prosecution and defense medical experts agree that Officer Faulkner died instantly from his head wound. Therefore Faulkner couldn't have spoken to anyone, nor could he have raised his arm and shot Mr. Jamal in the chest as he approached to offer assistance.

Mr. Singeltary's statement that William Cook's passenger threw his gun next to the Volkswagen driven by Cook fails to account for the fact that the gun found there was registered to Mumia Abu Jamal. He can't explain how William Cook's mystery passenger managed to get Jamal's gun out of its holster and shoot Officer Faulkner in the head with it. Additionally, Singeltary couldn't explain how Officer Faulkner was shot in the back.

He states that Faulkner was shot in the face from a distance of 5-10 feet, when all ballistics tests show Faulkner was shot in the face from less than 1 foot away.

Mr. Jamal wore a pair of normal pants, a shirt and a heavy jacket that morning, not a "safari suit like the Arabs wear" as Mr. Singeltary has stated.

Finally, as stated by everyone at the scene, there was no "police helicopter" there that night, because the Philadelphia Police Department has never owned a helicopter!

*If you chose to accept Mr. Singeltary's version of events, one amazing point is evident. According to Mr. Singeltary, Officer Faulkner's killer was actually a passenger in the car driven by Mr. Jamal's brother! If this were true, it's simply unbelievable that William Cook would refuse to tell anyone who the real killer was. Instead, Mr. Cook has stated that he had nothing to do with the*

*killing, refused to testify and allowed his brother to languish on death row for 16 years.*

### WAS WILLIAM SINGELTARY ACTALLY THERE THAT MORNING?

At this point, you might get the idea that Mr. Singeltary wasn't even there that morning. This would actually be incorrect. Mr. Singeltary was there, but at the time he admitted that he hadn't seen the shooting. Officer Vernon Jones, a Highway Patrol Officer, testified that he saw Singeltary there that morning. Mr. Singeltary stated under oath that he was acquainted with Officer Jones from his work as a tow truck driver.

Officer Jones states that Mr. Singeltary approached him long after the area had been secured by police. He stated that Mr. Singeltary asked him what had happened and Jones responded that a cop had been shot. Singeltary commented to Officer Jones, "I heard some shots but I thought they were firecrackers." (8-14-95, T.R. 21) Officer Jones also stated, "I asked Dales [Singeltary] if he had seen the shooting and he answered no." (8-14-95, T.R. 21) This testimony verifies that William Singeltary never saw Officer Faulkner being shot.

### THE DEFENSES ADAPTATION OF WILLIAM SINGELTARY'S TESTIMONY.

Promoting their police brutality story line, Mr. Weinglass, Jamal's supporters and in particular HBO make an issue of Mr. Singeltary's claim that he was intimidated by police after he gave them his statement. Although there has never been any corroboration offered for Mr. Singeltary's accusations, we feel it necessary to address these issues.

Mr. Singeltary claims that in 1981 he alerted police at the crime scene that he had witnessed the shooting of Officer Faulkner. He was taken to police headquarters in Philadelphia known as the "Roundhouse". It was at the Roundhouse that Singeltary claims he was interviewed by "Detective Green", who Singeltary states was a black man. (8-11-95, T.R. 209) When asked at the 1995 PCRA hearing how he knew the black Detective's name was Green, Mr. Singeltary replied, "He kept repeating it all night, all morning." (8-11-95, T.R. 232)

Mr. Singeltary swears that he was admitted to the Roundhouse at approximately 4am on the morning of the shooting, and that he left at around 9AM, only 4 hours after the shooting. While in the Roundhouse, Mr. Singeltary claims he provided a handwritten version of the mornings events for Detective Green. According to Mr. Singeltary, once he completed his written statement, Detective Green reviewed it, balled it up and threw it away. Green then

required Mr. Singeltary to re-write his version of the events no less than three additional times. Each time, according to Singeltary, Detective Green reviewed the content, balled the paper up and threw it away. Singeltary tells us that Detective Green finally became frustrated and he typed his own version of the events that morning. Mr. Singeltary claims that Detective Green demanded that he sign the typed document, which Mr. Singeltary claims he refused to do.

At that point, Mr. Singeltary says that Detective Green became angry and threatened him with bodily harm. Mr. Singeltary states, "He told me I wouldn't leave. That they would take me to the elevator and beat me up and that my business would be destroyed." (8-11-95, T.R. 212) Fearing for his safety, Singeltary claims he unwillingly signed the typed "police version" of events that morning.

Mr. Singeltary claims that having signed this inaccurate statement, he was visited by police at his place of business and threatened again. He also alleges that the windows of his gas station were routinely broken, allegedly "by police", and that his tow trucks were cited for numerous violations. He said this alleged intimidation became so oppressive that he was forced to abandon his business and leave town, moving to North Carolina. Singeltary states in the HBO documentary that the alleged ordeal made him feel "like a woman who had been raped."

This situation sounds significant, so we reviewed the record to determine it's merit.

Again we find, as Mr. Weinglass has stated, Mr. Singeltary's "recollection of the events of that morning are not entirely accurate."

The police logbook retrieved from the "Roundhouse" confirms that Mr. Singeltary signed himself in at 4AM and signed himself out at 9AM the morning of the shooting. This confirms that Mr. Singeltary was interviewed at the Roundhouse within an hour of the shooting. Records verify that Singeltary was interviewed not by an "Officer Green", but rather by a Detective Quinn.

Mr. Singeltary's next inaccuracy about his harrowing experience at the hands of the Philadelphia Police Department is unexplainable. Both William Singeltary and the interviewing Detective Quinn signed Singeltary's 1981 statement. It turns out that Detective Quinn, the "black" detective who allegedly threatened to take Mr. Singeltary to the elevator and beat him, the "black" detective who Mr. Singeltary claims "made him feel like a woman who had been raped." The "black" detective who allegedly typed a false statement and forced Mr. Singeltary to sign it against his will. The "black" detective who interviewed Mr. Singeltary for hours about

the brutal murder of a police officer. That "black" Detective Quinn is actually white.

Additionally, it turns out that the brash, threatening and intimidating Officer Quinn, who allegedly frightened Mr. Singletary so badly that he signed a false statement, had been a detective for less than 8 months!

Add to all of this that Mr. Singletary's own sworn statement, as well as the Roundhouse logbook, show that he signed himself in at 4AM and signed himself out at 9AM. Unfortunately for the Defense, this would not have allowed Detective Quinn sufficient time to formulate a version of his own, much less allowed him the time needed to know what the "official version" of the murder would be. There is no doubt that the detectives assigned to investigate Officer Faulkner's murder were still out at the crime scene collecting evidence and assembling witnesses at the time Detective Quinn allegedly typed the false "police version" and forced Mr. Singletary to sign it!

Mr. Singletary now claims that in 1982, he told Pennsylvania State Representative Alphonso Deal about the alleged police intimidation. However, Mr. Deal, who is now deceased, never mentioned this to anyone else.

The more one reviews William Singletary's testimony, the less importance it bears on this case.

### **DEFENSE ALLEGED "EYEWITNESS" #5, ROBERT CHOBERT**

The final person labeled by the defense as an "eyewitness" who said they "saw the shooter run away", was Robert Chobert. Both the defense and the prosecution agree that Mr. Chobert was one of the closest individuals to the shooting. Both sides also agree that Mr. Chobert was an actual eyewitness to the shooting. Mr. Chobert testified at the original trial and again at the 1995 PCRA hearing. The defense' use of Robert Chobert to bolster their "Running Man Myth" borders on the comical for two reasons. First, because the defense in their closing argument in 1995 attacks Mr. Chobert as a witness who sold out to the prosecution in order to get his drivers license back. Secondly, because Mr. Chobert is a prosecution witness who has physically identified Mumia Abu-Jamal as the man who shot Officer Faulkner on three separate occasions. Mr. Chobert physically identified Jamal as the shooter to the police at the crime scene, again in the courtroom in 1982 and once again in the courtroom at the 1995 PCRA hearing. Yet to support his "Running Man Myth", Mr. Weinglass simply disregards all of Mr. Chobert's credible testimony and persists in embellishing on a few key words from Chobert's original statement given to police an hour after the shooting.

## ROBERT CHOBERT'S TESTIMONY ABOUT THE MAN WHO SHOT FAULKNER.

Mr. Chobert was sitting in his taxicab, parked approximately 30 feet behind Officer Faulkner's police car. While testifying at the 1982 trial, Mr. Chobert's description of events was as follows: " I heard a shot. I looked up, I saw the cop fall to the ground, and then I saw Jamal standing over him and firing some more shots into him." (6-19-82, T.R. 210)

Mr. Chobert further stated, "Then I saw him [Jamal] walking back about ten feet and he just fell by the curb." (6-19-82, T.R. 211)

This is where the police apprehended Mr. Jamal only moments after the shooting.

In 1982, when asked by Prosecutor Joe McGill, "Other than those two males [Jamal and William Cook] and the Police Officer, was there anyone [else] there?"

Mr. Chobert replied, "No " (6-19-82, T.R. 213)

Chobert was also asked by Prosecutor McGill, in 1982, "From the time you saw the defendant [Jamal] shooting the Police Officer until the time that the defendant was placed in the [police] wagon, did you ever lose sight of the defendant?"

Mr. Chobert replied, "No, I didn't." (6-2-82, T.R. 2.59)

In the 1982 Motion to Suppress, Robert Chobert was being questioned by Mr. Jamal himself, the following exchange took place:

Jamal- "You did see the cop being shot - the man shoot the cop?"

Chobert- "Yeah, I said I did, didn't I?"

Jamal- "Well, you sure did. And you saw me in the back of the wagon didn't you?"

Chobert- "Yes, I did." Jamal- "What made you certain it [I] was the same man?"

Chobert- "Because I saw you, buddy. I saw you shoot him!" Jamal- "You saw me-"

Chobert- "*I saw you shoot him, and I never took my eyes off you until you got in the back of the wagon.*" (6-2-82, T.R. 2.74-5)

## THE DEFENSE ATTACKS ON ROBERT CHOBERT.

*In his public presentations, in his writings and in his closing argument before the court in 1995, Leonard Weinglass launches a double edged attack on Mr. Chobert's motives for testifying at the 1982 trial. Additionally, according to Mr. Weinglass' interpretation, while testifying Mr. Chobert appears to have made deviations from the statement he originally made to police the morning of the shooting.*

In their 1995 closing argument, the defense states, "Your honor heard testimony about a certain understanding that Mr. Chobert had [with Assistant DA McGill]. Mr. Chobert, your honor will

recall was a cab driver. And he was a cab driver who drove without a license. And that of course violates the law. And in fact on the very morning in question he was driving a cab without a license. We had here a very vulnerable witness. A man who's livelihood hinges upon his driving a cab. And upon his desire to drive a school bus. Yet he was driving without a license, yet he was driving with a record of DUI convictions. Yet he was driving with probationary status over his head. And that livelihood was thus in jeopardy when he got enmeshed in this entire episode, and his freedom was at stake by virtue of his probationary status and he was vulnerable for that reason." (9-11-95, T.R. 17-18)  
Additionally, in his article The Trial of Mumia Abu Jamal, Mr. Weinglass states, "The judge kept from the jury the fact that this witness [Chobert] had previously been convicted of throwing a Molotov cocktail into a public school for pay and was then on probation. He might have altered his testimony to curry favor with the prosecution or even out of fear."

#### A RESPONSE TO THE DEFENSE ATTACKS ON ROBERT CHOBERT.

When he was 18 years old, Robert Chobert had in fact been paid to throw a Molotov Cocktail into an empty school building. When Mr. Chobert gave his testimony in 1982, he was in the final months of his probation. (For legal reasons already deemed correct by the Supreme Court, this information was withheld from the jury. Chobert plead no contest to this charge and was placed on 5 years probation.)

The facts and Mr. Chobert's testimony dispel the idea that he altered his testimony to "curry favor" with the authorities, as Mr. Weinglass suggests.

We also find that the Defense' allegation that Assistant DA McGill had an "agreement" with Robert Chobert to arrange to get his drivers license back in return for favorable testimony, is another figment of the Defense' imagination. The court record reveals that ADA never made any such offer, let alone agreed to do so for favorable testimony.

Having leveled repeated attacks on Mr.Choberts' credibility, Mr. Weinglass had the opportunity to personally question Mr. Chobert about his driver's license and his probationary status, at the 1995 PCRA hearing.

In 1995, Mr. Weinglass asks Mr. Chobert, "Do you recall if back in 1981 or 1982 whether or not you had a conversation with the District Attorney who was prosecuting the case - Joe McGill - about your drivers license?"

Chobert replies, "Yes I did."

Weinglass asks, "Do you recall what he said to you at that time?"

Chobert replies, "He said he would look into it."

Weinglass continues, "All right. And when he said he'll look into it, that was in response to something that you had mentioned, was it not?"

Chobert replies, "I asked him if he could help me find out how I could get my license back." Mr. Weinglass immediately twists Mr. Chobert's words and asks, "Help you get your license back?"

The Assistant DA objects at this point and states, "That's not what he said!" (8-15-95, T.R. 4-5)

Mr. Chobert had not asked Mr. McGill to help him get his license back. He stated he had asked Mr. McGill to find out what steps he, Chobert, needed to take to get his license back.

Mr. Chobert further explains himself when he is asked by Weinglass, "Why was it important to you [to get your license back?]"

Chobert responds, "Because it's how I made my living. But I didn't testify because I was trying to get my license back." (8-15-95, T.R.)

In 1982, Robert Chobert was an individual who had limited access to legal representation. To determine what he needed to do in order to get his drivers license back, he took the opportunity to ask this question of ADA Joe McGill during the 1982 trial. ADA McGill's response to Mr. Chobert's impulsive question was to brush him off by simply stating, "I'll look into it." The defense has seized on this meaningless statement, which was voluntarily disclosed to the court by the prosecution, and tried to pass it off as evidence of a conspiracy against Mr. Jamal. The simple statement made by Mr. McGill, "I'll look into it.", stands as the only shred of alleged "evidence" pointing to a prosecution "deal" for Mr. Chobert. In fact, there was no deal. To evidence this, Assistant DA Arlene Fisk, while cross-examining Mr. Chobert in 1995 asks, "Did you expect Mr. McGill to get your license back for you?" Chobert's answer, "Not really, no."

Fisk then asks, "Was it your expectation that he was going to simply wade through the legal part of it and explain it to you, what you had to do?"

Chobert replies, "Yes."

Fisk questions, "You were in effect, using him as sort of a free lawyer?"

Chobert says, "Yeah, like a lawyer."

The Assistant DA inquires further, "You knew that Mr. McGill couldn't get your license back for you?"

Chobert answers, "Yes, ma'am."

Fisk then asks, "Did you ever call him [Mr. McGill] and say, yo, hey, what's the story, you promised me you were going to do this?"

Chobert replies, "No."

Ms. Fisk then asks, "In fact, you still don't have a license [13 years later]; is that right?" Chobert replies, "I [still] don't have a license." (8-15-95, T.R. 18-19)

Despite having heard Mr. Chobert state that he hadn't received his license back in a "deal" offered by the DA. This is how the Defense misrepresented Robert Chobert's 1995 testimony about his brief 1982 conversation with Assistant DA McGill, in their 1995 closing argument.

"And a conscientious, fair prosecutor at that point [when Chobert asks about his license] should tell the witness this is not a forum to bargain, to negotiate, you are to tell the truth. But Mr. McGill instead feeds in to Chobert's efforts to bargain for the value that he had [in his testimony], the power that he had over the prosecution of being a Commonwealth witness. He feeds into it by saying I'll give you that assistance. Which goes beyond the Ruder case. And it goes beyond any acceptable obligation, accepted norms of behavior for a prosecutor." (9-11-95, T.R. 20)

In addition to his false pronouncement stating that the Assistant DA helped Mr. Chobert get his license back in 1982. Mr. Weinglass also alleges that police gave Mr. Chobert "preferential treatment" as part of his "deal". Weinglass states that Chobert was "allowed to drive for years without receiving a citation for driving without a license." This allegation too is offered by the Defense with no tangible proof to back it up.

Mr. Weinglass has stated that a citation would have violated Chobert's probation and caused him to "lose his freedom". This is another distortion on Mr. Weinglass' part. A misdemeanor driving citation is not a violation of probation and would not have cause Mr. Chobert to lose his probationary status. As an attorney, certainly Mr. Weinglass should know this.

Mr. Weinglass had an opportunity to personally questioned Mr. Chobert about this situation at the 1995 PCRA hearing. We find that Mr. Chobert's testimony directly contradicts what Mr. Weinglass alleges, and exposes another defense ploy. In 1995, Robert Chobert told Weinglass that he was cited for driving without a license in 1982.

In 1995 Mr. Weinglass asks Mr. Chobert, "Okay. Were you ever arrested or charged or fined for driving without a license?"

Mr. Chobert's reply under oath, "Yes, sir. I'm not on trial though buddy!" (8-15-95, T.R. 22) So much for "currying favor with the Police."

Mr. Chobert's testimony stating that he was cited for driving without a license clearly dispels Mr. Weinglass' allegations. Yet Weinglass simply disregards Chobert's testimony and continues to express his distorted, self serving allegations at his public

presentations and in his writings to this day. The Defense produced no evidence in 1995 to counter Mr. Chobert's testimony about his citation.

#### DID ROBERT CHOBERT ALTER HIS TESTIMONY IN 1982?

In his piece, The Trial of Mumia Abu Jamal, Weinglass states, "The third witness [Robert Chobert] a cab driver, who had pulled up behind the police car, was closest to the shooting. He told police that the shooter fled the scene, before more police arrived, by running to where an alleyway intersects the sidewalk some thirty yards away." As you will see, when Mr. Chobert's original statement, given to police only minutes after the shooting, is read in context, Mr. Weinglass' statement is shown to be nothing more than a self serving misrepresentation of the facts.

On the record the defense draws the same questionable conclusion in their 1995 closing argument when they state, "... Mr. Chobert, was entreated and was given inducement to lie. It is clear from the [1982] court record as stated that he initially said the night of the murder, and his first statement on the scene, that the shooter ran away." (9-11-95, T.R. 26)

Mr. Weinglass calls into question the credibility of Mr. Chobert's testimony by claiming that he was on probation at the time of the trial and that he might have offered his testimony to gain favor with the police. For this reason, Mr. Weinglass sees fit to simply ignore Mr. Chobert's extensive testimony. Instead, Mr. Weinglass focuses on a few words (I saw the black male start running towards 12<sup>th</sup> Street), which he extracts out of context from Chobert's original statement given to police immediately after the shooting. When the record is reviewed, we find that Mr. Weinglass has carefully selecting two or three words from Mr. Chobert's original statement to police, then added his own spin to them. When Mr. Chobert's entire statement is examined, it's clear that he did not say that the man who shot Officer Faulkner "fled the scene by running to where an alley intersects the sidewalk some thirty yards away", as Mr. Weinglass states. What Mr. Chobert actually said in his statement to police about the man who shot Officer Faulkner, which was given only 25 minutes after the shooting, was this:

*"I saw a cop fall to the ground when I looked up and saw this black man stand over the cop and shoot him a couple more times. Then I saw the black male start running towards 12th St. He didn't get far, maybe twenty or thirty steps and then he fell." (Chobert statement, 4:25 AM, 12-9-81)*

What Mr. Weinglass also neglects to tell his readers is that in the same 12-9-81 statement, given only a few minutes after the shooting, Mr. Chobert refers to the second man at the scene,

William Cook, and states, "*I saw another guy running, but the cops grabbed him too. I'm not sure he was involved.*" (Chobert Statement, 12-9-81)

### CONCLUSION REGARDING ROBERT CHOBERT'S TESTIMONY.

Despite his damning testimony, Leonard Weinglass still embraces Robert Chobert outside the courtroom as an "eyewitness" who stated that the shooter ran away. Inside the courtroom however, Mr. Weinglass alleges that Mr. Chobert can't be believed because he had a "deal" cut for him by the District Attorney in return for favorable testimony.

*In his statement to police, given immediately after the shooting and long before police could have applied any pressure to him, Mr. Chobert clearly states that there were only two men involved in the shooting, Mumia Abu-Jamal (the shooter) and William Cook (the driver of the car). Mr. Chobert specifically states that both the shooter and the other man were apprehended by police at the crime scene. Nowhere does Chobert state that "the shooter fled up an alley" or that "the shooter ran away".*

Another point that contradicts Mr. Weinglass' allegation is that while testifying in 1982 about what happened the morning of the shooting, Mr. Chobert stated that he was asked by police at the scene, "Did you see what happened to the black male that you saw shoot the cop?" Chobert replied, "They got him, the cops got him and stuck him in the back of a wagon!" (6-19-82, T.R. 274)

*Contrary to Mr. Weinglass' assertions, it's clear that Mr. Chobert's testimony does not deviate from his original statement at all.*

*Rather, Mr. Chobert clearly states in his statement given the morning of the shooting (12-9-81), that the shooter attempted to flee, but he fell to the ground and was apprehended by police.*

*While testifying, he then elaborates on his original statement, providing a more detailed first hand account of how Mumia Abu Jamal murdered Officer Faulkner.*

In 1982, Mr. Chobert was repeatedly cross-examined by defense attorney Anthony Jackson regarding his courtroom testimony in relation to his prior statements to police. Having already physically identified Mr. Jamal as the shooter several times Mr. Chobert replied, "*I know who shot the cop and I ain't going to forget it.*" (6-19-82, T.R. 256)

In a final desperate attempt to counter the damage done to their client by Mr. Chobert's testimony, the defense actually argues on the record that Mr. Chobert didn't see the shooting at all! In their 1995 closing argument, the defense states, "... there is no evidence in the record that supports that he [Chobert] actually saw either Mr.

Jamal being shot, or he actually saw Mr. Jamal, shooting, shooting Officer Faulkner." (9-11-95, T.R.27)

## **THIS IS WHAT THE "CREDIBLE" EYEWITNESSES SAW.**

The testimony given by prosecution witness Robert Chobert, who was *unquestionably* an actual eyewitness to the murder, is virtually identical to that offered by the other four true eyewitnesses to the crime who have all been deemed credible by the court. Those individuals are: Michael Scanlon, Cynthia White, Robert Harkins and Albert Magelton. Their testimony is briefly as follows: **CREDIBLE EYEWITNESS MICHAEL SCANLON** was visiting Philadelphia from out of state. He was sitting in his car at the intersection of 13th and Locust and witnessed the entire murder, beginning to end.

Mr. Scanlon testified extensively at the 1982 trial. Mr. Scanlon first testified to seeing William Cook attack Officer Faulkner (See Myth #8). Then he stated, "At that point the officer reacted [to Cook's attack], trying to subdue the gentleman, and during that time another man came running out from the parking lot across the street towards the officer and the gentleman [William Cook] in front of the police car. I saw his [Jamal's] hand come up, like this, and I heard a gunshot when the man got to the policeman and the gentleman he had been talking to. Then the officer fell down on the sidewalk and the man [Jamal] walked over and was standing at his feet and shot him twice, I saw two flashes." (6-25-82 T.R. 8.6-7) *Then Mr. Scanlon offered his most compelling testimony. When asked by the prosecutor, Joe McGill, whether or not he thought the shots hit Officer Faulkner, Mr. Scanlon replied, "Yes, sir. I could see that one hit the officer in the face. Because his body jerked. His whole body jerked."* (6-25-82 T.R. 8.8)

### THE DEFENSE ATTACK ON ROBERT CHOBERT AND MICHAEL SCANLON

Because his testimony so badly incriminates their client, the Defense has often attacked Mr. Scanlon's recollection of events on December 9, 1981. They reference the fact that another witness mentioned the presence of a "drunk man" at the scene the morning of the shooting. In his testimony, Mr. Scanlon stated that he had a few drinks earlier in the evening. The Defense seizes on this opportunity and infers that Mr. Scanlon was the "drunk man" that was seen at the crime scene.

Simultaneously, the Defense also suggests that because Mr. Chobert had been cited for drunk driving in the past, he too was possibly the "drunk man". Essentially, they try to kill two birds with one stone.

The Defense often infers that neither Scanlon's nor Chobert's testimony is credible because they may have been drunk that morning. The record however, verifies that this was not the case. The 1982 reference to a "drunk man" at the crime scene was made by Officer James Forbes. When asked by Jamal's attorney Anthony Jackson to describe the drunk man he had encountered at the scene Officer Forbes stated, "I would say he was in his late fifties. He appeared to be over six feet tall. He was extremely intoxicated and he was wearing a white or tan trench coat. I believe he was balding also." Mr. Jackson: "You say he was extremely intoxicated. How could you tell that , sir?"

Officer Forbes: "He was staggering down the sidewalk."

Mr. Jackson: "How would you know that that was a result of intoxication as -"

Officer Forbes: "He spoke incoherently."

Mr. Jackson: " What did he say?"

Officer Forbes: "I couldn't understand it." (6-26-82, T.R. 107)  
Neither Scanlon nor Chobert fit the age, size or general appearance of this man. Additionally, Officer Forbes stated that the drunk man he encountered was carrying a paper bag that appeared to contain a six pack of beer. It's highly unlikely that

Mr. Scanlon or Robert Chobert would exit their vehicles with a six pack of beer in their hand and approach a Police Officer to give their statements.

Further, while being questioned by Mr. McGill about this man, Officer Forbes personally verified that neither Scanlon nor Chobert were the "drunk man" that he encountered. McGill: "Let me see if I can get the description straight. What was the description?"

Forbes: "He was somewhere over six feet, a white male, in his middle to late fifties, balding, and he had a white trench coat on."

McGill: "He was intoxicated?"

Forbes: "Extremely."

McGill: "The witnesses that have been called for the Commonwealth for this trial, Robert Chobert, Albert Magilton and Michael Scanlon, you have seen them?"

Forbes: "Yes, I have."

McGill: "They are not that person, are they?"

Forbes: "NO, They are not." (6-26-82, T.R. 110)  
Here again, we find the defense misrepresenting the facts to falsely attack witnesses that point to Mr. Jamal's guilt.

**CRDIBLE EYEWITNESS CYNTHIA WHITE**, not to be confused with the defense's fictitious eyewitness Veronica Jones,

was a prostitute working the area that night. When testifying in 1982 Ms. White stated, "I looked across the street in the parking lot and I noticed he [Mr. Jamal] was running out of the parking lot and he was practically on the curb when he shot two times at the Police Officer. It was in the back. The Police Officer turned around and staggered and seemed like he was grabbing for something. Then he fell. Then he [Jamal] came on top of the Police Officer and shot some more times. After that he went over and he slouched down and he sat on the curb." (6-21-82 T.R. 4.94-5)

**CREDIBLE EYEWITNESS ALBERT MAGELTON** was a pedestrian walking across the intersection at 13th and Locust, roughly 20 yards from the shooting. While testifying in 1982 to what he had witnessed Mr. Magelton stated, " I noticed the gentleman [Jamal] coming from the parking lot. He was moving across the street towards where the officer had stopped the Volkswagen. I heard shots and I didn't see the Officer no more. I proceeded back across the street to see what happened to the Officer. And then as I was moving across the street I looked. When I got to the pavement, I had looked down and I had seen the Officer lying there and I didn't see the other gentleman [Jamal] until I -- - until I moved up closer and he was sitting on the curb." (6-25-82 T.R. 8.75-7)

Under oath in 1982, when asked by Assistant D.A. Joe McGill what the police did with the man who was sitting on the curb next to the dead Officer, Mr. Magelton replied, "They handcuffed him and put him in the wagon. The officer took me over to the wagon and asked me if this was the gentleman I seen coming across the street. I said, yes, that's the man." (6-25-82 T.R. 8.78)

Mr. McGill also asks Mr. Magilton, "That individual that you saw running across the street from the parking lot, is he in this courtroom?"

Mr. Magilton replies, "Yes, he is. Right over there next to the gentleman in the suit." Mr. Magelton was pointing at Mumia Abu Jamal.

Mr. McGill asks, "Did you later see that man that you saw running across the street and that you saw at the curb anywhere else?"

Mr. Magilton replies, " Yes, they were putting him in the paddy wagon. An officer had seen me up there and asked me if this was the man. I said, that's the man I seen coming from the parking lot." (6-2-82, T.R. 2.95)

To the best of our knowledge, the Defense has never challenged Mr. Magelton's testimony in any way.

**CREDIBLE EYEWITNESS ROBERT HARKINS** was also a cab driver placed immediately across the narrow street from the

crime scene. At the 1995 hearing Leonard Weinglass states, "He [Harkins] was maybe the closest person to the shooting." (8-2-98, T.R. 220) Despite having witnessed the crime and having given a statement to that effect in 1981, Mr. Harkins is in the unique position of having neither the prosecution nor the defense call him to testify at the 1982 trial. Mr. Harkins' 1995 PCRA testimony is a key to further validating the other prosecution witnesses testimony. His 1995 testimony clearly points to the guilt of Mumia Abu-Jamal.

#### THE DEFENSE HARRASMENT OF ROBERT HARKINS

Mr. Harkins was asked by the defense to testify at the 1995 PCRA hearing. In 1995, Mr. Harkins stated under oath that he had repeatedly been harassed by Mr. Jamal's investigators between 1990 and July 1995. In reference to the defense investigators, Mr. Harkins testified, "There were so many that came around, so many different ones came around. They came up to my, where I work at and came down to my house, and I told them I didn't want to talk to them." (8-2-95, T.R.197-198)

Having kept his silence for over 13 years, Mr. Harkins finally succumbed to the defense' pressure and agreed to give a statement to one of Mr. Jamal's investigators on January 9<sup>th</sup>, 1994. According to Mr. Harkins, after that meeting he was repeatedly contacted by Jamal's investigators against his wishes. In reference to this situation, Mr. Harkins states under oath, "It was about two of them came up to the gas station where I worked at. Then a couple of them came to the house. And a couple more came to the house. Since after it started, I told them I wasn't talking to anybody [anymore]." (8-2-98, T.R. 198)

At the 1995 hearing when asked by Mr. Weinglass, "Mr. Harkins would you be willing to talk to the [defense] lawyers in this case?" Mr. Harkins, who was visibly upset with the defense for having repeatedly harassed him stated, "Well, mainly every time I say something, you [the defense] come back with something different than what I say to you, and I don't like that!" (8-2-95, T.R. 226) It appears that the Defense was again embellishing the testimony of another witness.

#### WHAT DID ROBERT HARKINS SAY IN HIS 1981 STATEMENT?

In his 1981 statement given to Detective Sutton at 5:20 AM on 12-9-81, only 1 hour after the shooting, Mr. Harkins said this, "I looked over and observed a police officer grab a guy, the guy spun around and the officer went to the ground. He had his hands on the ground and then rolled over at this time and the male who was standing over the officer pointed a gun at the officer and fired one shot and then he fired a second shot. At this time the officer moved

a little and then went flat to the ground. I heard a total of three shots and saw what appeared to be three flashes from the gun of the man standing over the officer." (Harkins Statement 12-9-81 6AM)

DEFENSE WITNESS HARKINS ECHOS THE OTHER WITNESSES IN 1995.

In his 1994 interview with Jamal's investigator, Mr. Harkins was questioned about, and limited his discussion to, whether or not he had been shown mug shots by the police in 1982. Prior to the 1995 PCRA hearing, Mr. Harkins had refused to discuss the details of what he witnessed the morning of December 9<sup>th</sup>, 1981, with either the prosecution or the defense. He'd kept his silence for over 13 years.

While testifying in 1995, having been asked by Mr. Dan Williams, one of Jamal's attorneys, "Had you talked with any detectives or anybody from law enforcement since 1982?"

Mr. Harkins replied, "No, I have not." (8-2-95, T.R. 197)

Mr. Harkins was called by the defense to testify at the 1995 PCRA hearing about the photos he had allegedly been shown in 1982.

After a series of twists in the defense questioning, Mr. Harkins suddenly found himself on the witness stand and under oath being asked by defense counsel Dan Williams to describe what he had seen at 4AM on December 9, 1981. It must be noted that this situation was completely spontaneous. Neither the defense, nor the prosecution had any idea what Mr. Harkins would say while testifying, and neither side had originally intended to question him about what he'd seen in 1981. This is what Mr. Harkins, who had kept his silence for 13 years and who, as stated by Mr. Weinglass himself, was "possibly the closest person to the shooting" said. Referring to William Cook, Defense council Dan Williams asked, "You didn't see a third person [at the scene] did you?"

Harkins replies, " I wasn't looking around."

Mr. Williams asks, "So when you were trying to describe people you were only trying to describe the officer and the shooter?"

Mr. Harkins replies, "Right." (8-2-95, T.R. 206)

Mr. Williams then asks, "Did they [the police] ask you questions about who did the shooting?" Mr. Harkins who had earlier stated that he had only focused his attention on the Officer and the shooter, replied, "No, I just told them I seen the guy [the shooter], he shot the thing, having the gun, the guy [the officer] was laying there. They were spinning around the pavement."

Mr. Williams asks, "Who was spinning around?"

Harkins replies, "The cop and the - they was like wrestling a little bit and the cop fell down." Williams asks, "Then what happened."

Harkins says, "Well, he [the shooter] leaned over and two, two to

three flashes from the gun. But then he [the shooter] walked, and sat down on the curb."

Stunned by Mr. Harkins' testimony, Williams asks, "*The guy who did the shooting walked and sat down on the curb?*" Harkins replies, "*On the pavement.*" (8-2-95, T.R. 208-209)

*This 1995 testimony comes from a defense witness placed by Leonard Weinglass as closest to the crime. It's virtually the exact testimony given by the other four prosecution witnesses, Scanlon, White, Chobert and Magelton, some 13 years earlier at the 1982 trial! The man that defense witness Robert Harkins describes as having shot Officer Faulkner and then sitting down on the curb, was apprehended by police only moments later. He was Mumia Abu Jamal!*

The defense has never challenged Mr. Harkins' testimony.

## **CONCLUSION REGARDING THE RUNNING MAN MYTH**

*With regards to eyewitness testimony, the case against Mr. Jamal boils down to this: each of the eyewitnesses deemed credible by the court (Chobert, Magelton, White, Harkins and Scanlon), stated they watched the shooter run from the parking lot, shoot Officer Faulkner and then collapse on the curb. Not one of them said that they saw the shooter run away. Most stated that they saw Mr. Jamal apprehended in the exact spot the shooter collapsed and then they saw him placed in a police wagon.*

*Within 1 hour of the shooting, each eyewitness, all of whom were less than 100 feet from the incident, had given a written statement to a different police officer and each stating that they had witnessed the exact same sequence of events.*

*Each eyewitness has been found to have testified credibly at the 1982 trial and at the 1995 PCRA hearing. Therefore, their testimony stands as the official record describing how Mr. Jamal murdered Officer Faulkner on December 9, 1981.*

To counter the devastating testimony delivered by the real eyewitness, the Defense offers the "Running Man Myth". It should be noted that three of the four individuals the defense has labeled as "eyewitnesses" to support their "running man myth"(Hightower, Jones and Singeltary) were deemed by the court, "not to have testified credibly" in 1995 and 1996. Thus their testimony is considered unproven, and it will not be a factor in Jamal's future appeals.

*As we've discovered, when the testimony of the individuals that the Defense has labeled as eyewitnesses is reviewed, only the highly suspect William Singeltary has actually stated that he saw the shooter run away. It must be remembered that Mr. Singeltary also*

*said the shooter was a passenger in Jamal's brother's car! The other three individuals offered by the defense, Jones, Hightower and Kordansky, all stated under oath that they never witnessed the murder because they were in locations that precluded them from seeing the shooting. Robert Chobert, the prosecution witness who is adopted by the Defense, has physically identified Mr. Jamal as the killer three times!*

It's clear that each of the Defense' "eyewitnesses" looked at the crime scene several minutes after the shooting had stopped. Given the area and the fact that a police officer had just been shot, it's no surprise that they saw several people running near the crime scene. It's also clear from their testimony, that not one of these individuals has stated that they witnessed the shooting, or that they saw the shooter run away. *It's quite clear that each of the Defenses alleged "eyewitnesses" (Chobert, Singeltary, Jones, Hightower and Kordansky) actually saw a different person "running" at the crime scene.*

When the testimony is reviewed, it's clear that the defense' "Running Man Myth" is nothing more than a thinly veiled fairytale, dreamed up by the defense to deflect attention away from the overwhelming eyewitness testimony against Mumia Abu-Jamal.

## MYTH #3

The jury that convicted Mr. Jamal was racially stacked against him by the Prosecution, in violation of his civil rights.

Some supporters have claimed that there was only one black juror at Mr. Jamal's original trial in 1982; others have said there were none.

In his book "Race For Justice", Mr. Weinglass states, "During the course of the jury selection, the prosecution used eleven of fifteen preemptory challenges to excuse nearly 75 percent of the eligible black jurors." In his presentations Mr. Weinglass claims that the sole reason for the Prosecution's dismissal of these prospective jurors was the fact that they were black.

Mr. Jamal's attorney's now argue that his absence from an "in chambers conference" in which the Judge, the Prosecutor and Jamal's attorney discussed the removal of a juror who had violated sequestration, was unconstitutional. They argue that this juror, Ms.

Jennie Dawley, who was "black," was purposely removed because she was the only juror "selected by Mr. Jamal personally."

## **BRIEF REBUTTAL**

The jury that convicted Mumia Abu-Jamal in 1982 was not simply thrust upon him. On the contrary, unlike most individuals accused of first-degree murder, the allegedly bias court afforded Mumia Abu-Jamal the opportunity to personally select his own jury. The court record reveals that Mr. Jamal was granted complete control of the questions to be asked of each prospective juror and that he was permitted to personally determined how each of his 20 preemptory challenges was used.

The jury that was originally seated at the 1982 trial was nearly a perfect reflection of the racial make up of Philadelphia at that time. Further, this myth has already been reviewed by the Pennsylvania State Supreme Court and found to be without merit.

In 1982, Judge Sabo encouraged the defense to note the race of each prospective juror so it would become part of the official record. However, they failed to heed the judge's recommendation. Because of this, despite what Mr. Weinglass asserts outside the courtroom, today there is no way to tell exactly which of the 15 prospective jurors that the prosecution preemptorily challenged, was black. The alleged fact that 11 black jurors were struck by the prosecution, which Mr. Weinglass purports to be fact, is purely unsubstantiated speculation on his part.

In the courtroom, Mr. Weinglass has never proven that the prosecution excluded only blacks with the 15 preemptory challenges they used, or that those blacks that were removed, made up "75% of the eligible black jurors". Further, the court transcripts show that each of the individuals released by the prosecutor in 1982 was released for valid non-racial reasons.

As for Jamal being absent from the "in chambers" meeting, Jamal was not present from the "in chambers" conference, because he had once again been removed from the courtroom due to more of his disruptive and contemptuous actions in the courtroom. At the time this conference was held, Jamal was being represented by counsel, and his counsel agreed that Ms Dawley should be removed, stating that she had been "very belligerent" towards Mr. Jamal.

## **FACTS SUPPORTING OUR REBUTTAL**

The Pennsylvania Supreme Court has already reviewed this myth and ruled on it. They found it without merit! When one reviews the facts, it's easy to see why they ruled this way.

### **THE JURY SELECTION PROCESS**

At the outset of the trial, Mumia Abu-Jamal chose to be represented by court appointed counsel. On May 13, 1982, Jamal suddenly and unexpectedly chose to remove Anthony Jackson, and proceed from that point in a "pro se" (representing himself) status. It's important to note that Mr. Jamal was acting as his own attorney when jury selection began in 1982. Throughout the first three days of jury selection, Mr. Jamal personally interviewed each prospective juror. During this time, 1/3 of the entire jury pool was used up and only 1 juror was selected. On the third day of jury selection, Prosecutor Joe McGill noted that the jury selection process was taking an inordinate amount of time. He also noted that several prospective jurors had stated that they were frightened by Mr. Jamal's manor of questioning. In fact, one prospective juror, Ruth Swenk, stated that Mr. Jamal's questioning "Scares me to death." (6-8-82 T.R. 2.138)

Due to these situations, prosecutor McGill made a motion to Judge Sabo in which he suggests that, in an effort to quicken the pace of jury selection, and to insure that Jamal was not judged by a having adverse personal feelings against him, Judge Sabo begin asking all questions for both the prosecution and the defense.

McGill: "I was going to make a motion. Judge, my motion is that your Honor take over the voir dire (jury questioning). That will, of course, mean taking over the voir dire for questions from both sides, not just Mr. Jamal's but also mine. I wouldn't be able to ask any [questions] either.

The authority your Honor, would be Pennsylvania Rule of Criminal Procedure 1106D, where it says that the Judge may permit the defense and the prosecution to conduct the examination of prospective jurors or may itself conduct the examination. This is clear authority for Your Honor to do this.

The reasons for this request are twofold: The first reason is that I believe that the speed of the voir dire or should I say the pace of voir dire is extremely and deliberately, very slow. However, either because of Mr. Jamal's maybe inexperience in asking specifically framed questions or his decision to ask questions, not all I believe to be relevant for the purposes of voir dire, it has caused in the last two days only 20 jurors to be questioned and one to be chose. That means 30 in the first panel, and this will be the third day of panel one. There are 30, more than half, as a matter of fact, 60% remain to be questioned.

I believe, Your Honor, that if the Court would ask the questions, questions that would safeguard the rights of both the Commonwealth and the defendant, this would expedite the matter without in any way infringing upon the rights of the defendant. The second reason is because of my own experience in past trials. I could say that in reference to what I have observed during the course of this voir dire, it appears to me and it will appear on the

record, certainly on the last two witnesses, it appears to me that in many cases throughout the voir dire there is an unsettling effect when the defendant, who is charged with such a heinous crime, if the facts are accepted by the jurors, particularly that of shooting a policeman in the back and then shooting him in the face at close range, it tends to create in the venierperson an unsettling feeling, as a matter of fact in a few jurors outright fear.

Now, when we have a situation where an individual himself is asking questions and creating that type of anxiety, which would be different that the anxiety where another individual, his attorney, would be asking them, referring to a third party in the courtroom, the possibility for answers which are not clear, that are confused or that in fact unfortunately, I believe that these jurors in as much as some of them are fearful, will begin to find reasons that they don't want to serve. Even though they would be arguably good jurors, because of the emotion that is presented to them, they are not giving clear answers or are too upset to be able to answer correctly. ... So I would suggest Your Honor, that from now until the end of voir dire -- and I have in front of me three sheets of questions, really two and a half sheets of questions, which are greatly limited yet covering all areas of, I believe, concern vital areas of interest in the issue on this particular case. I would ask that this Court take over the voir dire, all of the questions, and review these questions to see if you feel there should be any additional questions or you should delete some. I will, of course, give them to counsel to take a look at or to Mr. Jamal. That is the Commonwealth's position." (6-9-82, T.R. 3.2 -8)

This was an option clearly within the guidelines of Pennsylvania law. Judge Sabo had the right to assume jury questioning at any time and for any reason. Mr. Jamal repeatedly offered lengthy arguments as to why Judge Sabo should not take over the voir dire. Jamal also refused to comment on Mr. McGill's questions and told Anthony Jackson not to look at them. At this point, Jamal, once again, began to demand to have John Africa "represent him and ask the questions of the jury." Judge Sabo had previously refused Jamal's request to be "represented by John Africa" and he did so again. At this point, Sabo felt that he had no alternative but to accept McGill's suggestion, and began to question jurors. Judge Sabo had questioned a small number of prospective jurors when Jamal's allegedly incompetent defense attorney, Anthony Jackson, made an impassioned plea to Sabo asking that Mr. Jamal be allowed to continue his questioning of prospective jurors. In response, the allegedly biased Judge Sabo appears to have been moved by Jackson's response to Prosecutor McGill's request. Instead of choosing to continue questioning the prospective jurors himself, Sabo instead decided to have the experienced, and

formally trained Mr. Jackson, ask each prospective juror a series of questions that had been submitted by Mr. Jamal. Upon hearing the answer to these questions, Sabo allowed Jackson to return to the defense table and confer with Jamal as to whether he wanted to use one of his 20 preemptory challenges, to challenge the person "for cause" or to accept the person as a juror.

Judge Sabo: "I may offer as a compromise, since we have about 60% of this panel left, that I offer it to you as a suggestion: That Mr. Jamal allow you [Mr. Jackson] as back-up counsel to conduct the voir dire. That will eliminate the two factors that are involved here: One, the unnecessary slowness of the process and secondly, the face-to-face confrontation between the defendant and the expectant jurymen. If you want to do it, I'm willing to try it that way. (6-9-82, T.R. 3.18)

Prosecutor Joe McGill agreed to this process. However, Mr. Jamal, who stated, "That's not in the interest of justice, that's in the interest of conviction." (8-9-82, T.R. 3.20) felt this process was unacceptable to him. Sabo attempted to hold a side bar conference with Jamal, Jackson and McGill, to discuss the questions that had been submitted by Mr. McGill. Jamal refused to participate. Anthony Jackson was asked to approach the bench, and he told Judge Sabo that Mr. Jamal had forbidden him from participating in the trial any further. At the side bar conference the following conversation occurred:

Jackson: "I have been instructed by Mr. Jamal not to participate."

Court: "That's all right. I just want you here to listen."

Jackson: "He asked me not to participate."

McGill: "Your honor may order Mr. Jackson to participate."

Court: "Mr. Jackson, just come over here."

Jackson: "Your Honor, in all due respect, I think that I have to follow the wishes of my client."

Court: "That's not exactly true."

Jackson: "Sir, under the circumstances I feel compelled to follow his wishes, Your Honor."

Court: "Well, you realize you will be in direct contempt of this Court and I may very well sentence you to six months in prison."

Jackson: "I appreciate that, Your Honor, but under the circumstances my right to represent Mr. Jamal, even in this modified circumstance, I feel compelled to follow the wishes of my client..." (6-9-82, T.R.3.21-2)

Jamal again began to argue with Judge Sabo over the progression of voir dire.

Defendant: "I would like to comment on that, Judge. I asked Mr. Jackson not to step over to sidebar at my request, because it's very clear from the discussions we have had this morning that neither you nor the DA can be trusted."

We had a meeting in there and we talked about the questions to be asked. We [the defense] had 115 questions [to be asked of each prospective juror]. We came out with 20 of them. Now after it was agreed that I could conduct my own voir dire for a jury of my peers, now let's forget about what we agreed about. It seems very - - can I finish, Judge?"

Court: "There was no agreement. Don't tell me. There was no agreement."

Defendant: "There was an agreement for individual voir dire. If you want to check the record, the record is there."

Court: "The court at any time can change that ruling."

Defendant: "Without cause, without reason, because the DA says so?"

Court: "There are two reasons: one --"

Defendant: "the reasons are because you are holding the DA's hand."

Court: "no, I am trying to hold your hand."

Defendant: "no, you are not trying to hold my hand. I want John Africa. If you want to hold my hand, you are not doing me any favors."

Court: "I've bent over backwards for you to allow you to try --"

Defendant: "No, you did not."

Court: "You have indicated to this court that you do not have the expertise necessary to conduct a voir dire."

Defendant: "I think I have too much experience for Mr. McGill."

Court: "And your actions have unnecessarily delayed these proceedings."

Defendant: "You are looking for a speedy voir dire?"

Court: "No. I have jurors that are out there that are disgruntled because they have been here for three days. They thought they were here for one day, one trial."

Defendant: "I didn't tell them one day, one trial; you did."

Court: "The court told them."

Defendant: "You should have known better, Judge."

Court: "That is true, one day, one trial."

Defendant: "Do we have a time limit on voir dire, Judge?"

Court: "In addition to that, your questioning on the voir dire has made them unsettled."

Defendant: "Judge, you have not found that from the witness stand. You have not judged that. You have assumed that."

Court: "I have observed that by my own observation."

Defendant: "I have observed your own prejudice and bias in this case, Judge."

Court: "I have seen the jurors actually become antagonistic towards you, and in fairness to everyone concerned, the Court has ruled that under the Rules of Criminal Procedure # 1106, the court has the right to conduct voir dire."

Defendant: "What you are saying has nothing to do with fairness. It may be procedure, but it may not be fair. (6-9-82, T.R. 3.27-9) This courtroom bickering between Sabo and Jamal went on for hours, until Judge Sabo finally tired of arguing with Jamal and began to question the prospective jurors again. During this time, Jamal actually participated in the process and used several of his preemptory challenges.

Court: "Any other questions [of venireperson # 523, Patricia Vogel]?"

Defendant: "Peremptory, Judge."

Court: "Peremptory challenge?"

Defendant: "Peremptory." (6-9-82, T.R. 3.57)

Then as suddenly as he had stepped in, Jamal would step back out of the process.

Court: "Is there anything I could say that would change your [negative] opinion about the Death Penalty?"

Venierperson: "No."

McGill: "Challenge for cause, Your Honor."

Court: "Anything from the defense?"

(No response.)

Court: "Hearing nothing, I will excuse you. Thank you very much."

(6-9-82, T.R. 3.68)

Then Jamal would suddenly jump back in again.

McGill: "Your Honor, Mr. Warner is acceptable to the prosecution juror #2."

("Mr. Jackson and defendant confer.")

Defendant: "Peremptory, Judge." (6-9-82, T.R. 3.85)

It was also during this time that Mumia Abu-Jamal personally struck a prospective black juror James Burgess. (See the section titled "The Racial Makeup of the Jury" below.)

McGill: "Your Honor, Mr. Burgess is acceptable to the Commonwealth as Juror #2."

("Mr. Jackson and the defendant confer.")

Defendant: "Peremptory, Judge."

Court: "For the record, would you give us your race, please?"

Venierperson: "Black, Negro."

Court: "Thank you very much. You are excused." (6-9-82, T.R. 3.92)

After lunch recess, Mr. Jackson addressed the court and suggested that he and Mr. Jamal had come to an agreement that they should accept Judge Sabo's alternative questioning process and proceed in that fashion.

Jackson: "... I think now to further aggravate or exacerbate the situation, Mr. Jamal is saying on effect that I am authorized to conduct the voir dire on his behalf and that he does not wish to

participate in this process to the extent that Mr. McGill has requested that." Court: "Does he have any objection to his statement on the record that he has agreed to accept what I suggested as a compromise this morning, that you conduct the voir dire, not that you replace him in the trial, but just for the jury selection?"

Jackson: "Mr. Jamal fully appreciates that my representing him in effect right now is temporary and it's only the voir dire."

Court: "I know that. But is there any objection to his so stating publicly on the record for the Court?"

Jackson: "Mr. Jamal wishes not to participate in this process by making his objection known."

Court: "How can I accept it if he's not going to tell me?"

("Mr. Jackson and defendant confer.")

Jackson: "Your Honor, after consultation with Mr. Jamal, I am reminded, of course, that Mr. Jamal has asked that I be removed from this case. Of course, Your Honor knows that I have asked to be removed from this case a number of times. Mr. Jamal further states, Your Honor, that his belief, his thoughts with regards to his right to self-representation have been limited. He feels that if it was all right for him to be silent and be a non-participant in the process that was conducted by Your Honor, other than his peremptory challenges, that his silence was okay then, his silence ought to be accepted now with representations that I am making to this Court with respect to his wishes.

May it please the Court and counsel as well, so that perhaps they could deliberate and make a decision about this as well, Mr. Jamal had also asked me to have Your Honor again rule on his request for John Africa. If in fact, Your Honor was inclined to deny that request, he further requested that Your Honor would certify that question for appeal."

Court: "Denied."

Jackson: "Would Your Honor consider certifying the question?"

Court: "You can go to the Supreme Court or wherever you wish, and if they will accept it fine." (6-9-82, T.R. 3.1117)

During the 1982 trial, Judge Sabo's decision to refuse Jamal's request to be represented by John Africa, who was a non-lawyer and the founder of the MOVE violent anti-police anti-government group MOVE, was appealed by Mr. Jackson to the Supreme Court. They upheld Judge Sabo's ruling.

Having refused to speak when Judge Sabo asked if Mr. Jackson had represented his wishes accurately, Jamal's silence was noted on the record as an affirmation of the new questioning process. The trial record confirms that the jury selection process proceeded in this fashion until the final jury was seated. In addition to

developing the questions asked of his prospective jury, the trial record reveals that Mr. Jamal personally determined how each of his 20 preemptory challenges was used. The record verifies that upon completing his questioning of each prospective juror, Anthony Jackson would approach Mr. Jamal and confer with him. Upon completion of this conference, Mr. Jackson would announce to the court Mr. Jamal's decision as to whether that particular prospective juror would be allowed to serve on the jury, or if a preemptory challenge was to be used to remove them.

#### THE MAKE RACIAL MAKE UP OF THE JURY.

In evaluating the validity of the racially stacked jury myth, it's important to understand that at the beginning of the 1982 trial, 3 of the 12 jurors seated were black. Even Mr. Weinglass doesn't dispute this fact. The record reveals that the first two jurors seated by the Prosecution were in fact, black. The court record also verifies that the prosecution agreed to seat a fourth black juror, Mr. James Burgess. However, Mr. Jamal while acting as his own attorney personally used one of his preemptory challenges to release Mr. Burgess. Had Mr. James Burgess been seated, there would have been four black jurors at the outset of the trial. This racial configuration would have been a perfect racial makeup of the city of Philadelphia in 1982 (33.3% Black).

It must be noted, that when the jury went into deliberations, there were only 2 black jurors left. While the trial was ongoing, one of the black jurors, Ms. Jenny Dawley, violated sequestration to attend to a sick cat. When questioned by the judge, the defense (Anthony Jackson, who was representing Jamal at this point.) as well as the prosecution both agreed to her removal.

Mr. Weinglass now asserts that the judge displayed "racial bias". He argues that Judge Sabo had earlier made special arrangements for a "white juror" to take a civil service exam, but he failed to display the same flexibility with Ms. Dawley, who was black, when she left the hotel without permission.

The allegation of racial bias may appear to warrant concern, however the transcripts directly contradict this claim. When Judge Sabo allowed the "white juror" to leave the hotel to take his civil service exam, he noted that it was required that this juror be physically present to take the test. However, when questioned about her "sick cat," Ms. Dawley acknowledged that her husband was at home. Sabo noted that he, her husband, could take the cat in for treatment.

In 1995, Judge Sabo explained, for the record, why he hadn't made similar arrangements for the second juror, Ms. Dawley, in 1982. At the 1995 hearing, Mr. Weinglass confronted Judge Sabo with his allegation that Ms. Dawley, who was sequestered in a hotel, had

communicated with him by note, her desire to leave the hotel to attend to her cat.

*Judge Sabo immediately responds to Mr. Weinglass' allegation by stating:*

*"She didn't communicate with me Counselor, let's get that straight. I didn't know a thing about it until the Court Officer relayed the information to me [after she had already left the hotel]." (7-12-95, T.R. 26)*

Further, Assistant District Attorney Hugh Burns addressed this issue in his opening statement in 1995. He stated:

"She [Ms. Dawley] didn't get the courts permission to go, she simply chose to go. And then the [court] crier reported it to you [Judge]—and this is a part of the record—when he [the court crier] told her that she should not leave, she [Ms. Dawley] said, "I don't care what Judge Sabo or anybody says, I do what I have to do, nobody is going to stop me." (7-12-95, T.R. 49)

Ms. Dawley chose to violate her sequestration without ever asking Judge Sabo to accommodate her personal needs. The record shows that both the prosecution and the defense agreed to Ms. Dawley's removal from the jury. Mr. Jackson states:

"I thought it was a matter of whose side she ended up on, but she was definitely belligerent." (6-18-82, T.R. 2.43)

By random selection, the alternate juror selected to replace Ms. Dawley was white.

In his writings, Mr. Weinglass claims this new juror had displayed bias against Mr. Jamal. This is purely speculation on Mr.

Weinglass' part. However if it were true, the defense certainly could have dismissed this individual during jury selection, yet they chose not to.

### WHY WASN'T MUMIA PRESENT WHEN JENIE DAWLEY WAS REMOVED?

The day after Ms. Dawley had left the hotel to attend to her sick cat, and subsequently returned to her hotel room, an "in chambers" conference was held at which Jamal was not present. It was during this meeting that the judge, the prosecutor and Jamal's attorney, Anthony Jackson, who was representing Jamal at the time, reached a consensus that Ms. Dawley should be removed as a juror because she had violated sequestration, and because she had displayed adverse feelings towards Jamal.

Mumia Abu-Jamal was not barred from attending this meeting due to a diabolical plot to remove Ms. Dawley in order to "railroad" him, as his supporters often imply. Rather, Jamal was not present at this meeting because he had once again been removed from the courtroom due to his disruptive and contemptuous actions prior to

the meeting. Anthony Jackson was representing Jamal as counsel during this conference, as prescribed by law.

While Ms. Dawley was certainly "black" as claimed by Jamal's counsel, she was not "personally selected by Mr. Jamal" as his attorneys and supporters argue. The facts are clear. Through the jury selection process suggested by Judge Sabo and agreed to by each side, both Mumia Abu-Jamal and prosecutor Joe McGill selected each of the jurors. Mumia Abu-Jamal was given every opportunity to personally select his entire jury. The court record clearly reflects that he actively participated throughout the entire jury selection process, personally determining who should be accepted and who should be challenged. In addition, had the prosecution not agreed to seat Ms. Dawley, they could have "struck" her with one of their 5 unused peremptory challenges. Mr. Jamal's current attorneys also argue that Mr. Jamal's being "barred" from attending this conference was a violation of his right to "due process". This issue is currently pending before the U.S. Supreme Court. Therefore, there is still a legal decision to be made regarding this argument. However, it is our understanding that no less than 15 appellate court judges have previously reviewed this "due process" claim. They have all found it to be without merit. It is also our understanding that the basis for prosecution's argument against this claim is legal precedent established in two cases called *Snyder vs. Massachusetts* (1934) and *United States vs. Gagnon* (1985) in which the court ruled that, "whenever his presence has a relation, reasonably substantial, to the fullness of his opportunity to defend against the charge, [the] presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by his absence, and to that extent only." It is certainly a long reach by Mr. Weinglass to suggest that the absence of a juror, who according to his client's own attorney was "very belligerent" towards Jamal, would "thwart a fair and just hearing". In the end, the U.S. Supreme Court will make this decision.

#### DID THE PROSECUTION USE 11 PEREMPTORY CHALLENGES TO EXCLUDE BLACKS?

In his book "Race for Justice" Leonard Weinglass, Jamal's current defense attorney states:

"The prosecution used 11 of 15 peremptory challenges to exclude 75 % of the eligible black jurors." In his public presentations, he state that Prosecutor Joe McGill purposely and knowingly used 11 of the 15 peremptory challenges he exercised in 1982 to "exclude otherwise qualified black [African American] prospective jurors from serving on the jury, simply because they were black."

This is obviously a substantial attack on the moral and ethical standards of Mr. McGill. It is also one of the key issues raised on appeal by Mr. Weinglass, purporting to show that the 1982 trial was "unconstitutional." This allegation is also blindly repeated by many of the "celebrities" such as Tom Morello (Rage Against the Machine), Mike Farrell (M\*A\*S\*H) and Ed Asner, each of whom regularly speaks out to the media offering allegedly "factual" support for Mr. Jamal.

The courts that hear Mr. Jamal's appeals will certainly have the last word on this matter. However, for the benefit of those interested in this case, we have listed the facts as they are shown in the court record.

During the initial stages of jury selection, Mr. Jamal was acting as his own attorney. One of the responsibilities that Mumia Abu-Jamal assumed when he began representing himself at the 1982 trial was the responsibility of asking each prospective juror what their race was and noting it in writing for the record. Judge Sabo actually encouraged Mr. Jamal to do so. For some reason, Mr. Jamal chose not to follow this advice. Jamal failed to note the race of each prospective juror. Therefore, to this day, there is no definite way to tell what the race of each prospective juror was. It is thus easy for Mr. Weinglass to level his accusation against the prosecution outside the courtroom; there is simply no way to prove him wrong on this issue. However, inside the courtroom, where accusations must be backed up with fact, Mr. Weinglass has failed to support his myth. His accusation has been reviewed by the State Supreme Court and dismissed as being without merit.

#### DID THE PROSECUTION RACIALLY FIX THE JURY?

The two most obvious facts that undermine the defense allegation that the prosecution "racially fixing the jury" is the fact that the prosecution accepted and agreed to seat four African-American jurors, and that they had five (5) unused preemptory challenges when the jury was seated for trial. Had they intended to racially "fix" the jury, they could have exercised these unused challenges to exclude the three black jurors that were seated, as well as James Burgess, the black juror accepted by them, who was preemptorily struck by Jamal.

In the 1982 trial, each side began with 20 preemptory challenges. By definition, "Preemptory Challenges" afford both the prosecution and the defense the right to strike any prospective juror without offering a reason to the court. However, this system leaves open the possibility that either side might use their preemptory challenges to exclude qualified individuals from a jury solely because of their ethnicity. With their 1986 Batson vs. Kentucky decision, the U.S. Supreme court established legal precedent forbidding this practice.

In lay terms, the Batson decision has three "legs" that must be established in order to support the "prima facie" claim of purposeful "racial discrimination" in the selection of a jury. The first "leg" requires the defendant to establish that he/she is a member of a recognized ethnic group, such as black or Asian. There is no doubt that Mumia Abu-Jamal is African American. The second "leg" of "Batson" requires the defense to establish beyond any doubt that there were persons "struck" by Prosecutor McGill that were members of a recognized "racial group." There is no doubt that this occurred. In 1995, the prosecution "stipulated" that Mr. McGill might have used 10 peremptory challenges to excuse prospective African American jurors in 1982. The third "leg" of "Batson" decision requires the defense to establish beyond any doubt that Mr. McGill chose to exclude all of these individuals "solely on the basis of race." If the defense succeeds in establishing these "legs," then "the prosecution is required to provide non-discriminatory reasons for striking the potential jurors." (10-29-98, Pennsylvania Supreme Court Decision, Pg. 57) At the 1995 PCRA hearing, the prosecution was required to establish, by virtue of the questions asked in 1982, years before the "Batson" decision became the legal standard, that prosecutor Joe McGill in no way asked questions of black jurors that could be construed as prejudicial. Additionally, they had to supply substantial non-racial reasons for striking the African American's that they excused. When reviewed, the court transcripts verify that there were 10 "black" jurors struck by the prosecution in 1982, not 11 "black jurors" as Mr. Weinglass is fond of alleging outside the courtroom. The record also verifies that the prospective jurors dismissed by the prosecution with their preemptory challenges, was dismissed for valid non-racial reasons, not "solely by virtue of the fact that they were black", as Mr. Weinglass suggests. The 15 persons "struck" or "peremptorily challenged" by the prosecution in 1982 and the reasons given for their dismissal are listed below:

- 1) Ms Janet Coates. (Black) Expressed in her answers that she would be "bias against police" and that she had "listened to Mr. Jamal on the radio." (6-7-82, T.R. 129-30)
- 2) Ms Alma Austin (Stipulated to being black at 1995 PCRA hearing.) While answering questions she expressed strong feelings against the Death Penalty. (6-8-82, T.R. 2.51-54)
- 3) Ms Verna Brown (Black) While answering questions she stated that she had listened to Mr. Jamal on the radio. (6-8-82, T.R. 3.242-245)
- 4) Ms Beverly Green (Race unknown. At the 1995 PCRA hearing Mr. Weinglass stated that he would verify that Ms Green was "black." However, he removed her name from the witness list

at the last moment.) In 1982, she was very hesitant to answer the prosecutions questions. (6-8-82, T.R. 3.242-245)

5) Ms Genevieve Gibson (Black) While answering questions she stated that she listened to Mr. Jamal on the radio. (6-10-82, T.R. 4.78)

6) Mr. Gaitano Ficordimondo (Race unknown) (6-10-82, T.R. 4.96)

7) Mr. Webster Riddick (Black) While answering questions, he stated that he had "strong reservations" about the Death Penalty. (6-10-82, T.R. 4.222-224)

8) Mr. John Finn (Race unknown) While being questioned, he stated that he was a member of the clergy. He was also very hesitant to answer the prosecutor's questions directly. (6-11-82, T.R. 5.75-82)

9) Mr. Carl Lash (Black) While answering the prosecutor's questions he stated that he had formerly been a "prison counselor." (6-11-82, T.R. 5.105, 110-111, 113-114)

10) Ms Delores Thiemicke (Race Unknown) Stated that she was unemployed at the time of questioning. (6-11-82, T.R. 5.192-193)

11) Ms Gwendolyn Spady (Black) While answering the prosecutor's questions, she stated that she had listened to Mr. Jamal on the radio and displayed that she misunderstood what the "presumption of innocence" meant. (6-15-82, T.R. 111-113)

12) Mr. Mario Bianchi (Race not of record.) Stated he listened to Jamal on the radio and he displayed that he couldn't understand the idea of "presumption of innocence". (6-15-82, T.R. 111-113)

13) Mr. Wayne Williams (Black) While answering questions, he stated that he had listened to Mr. Jamal on the radio. (6-15-82, T.R. 171-173)

14) Mr. Henry McCoy (Black) While answering questions asked by Mr. McGill, he stated that his daughter worked at the same radio station with Jamal. (6-15-82, T.R. 223-225)

15) Ms Darlene Sampson (Stipulated that she was black at 1995 PCRA hearing.) While being questioned in 1982, she stated that she had listened to Mr. Jamal on the radio, that she had strong feelings against the Death Penalty and that she "could not be fair if the trial was a long one." (6-16-82, T.R. 276, 281-291, 293-297) It must be noted that in the State of Pennsylvania, as in many states, it is a legal requirement in a capitol murder case, that any person not willing to consider a death sentence be dismissed from the jury.

In 1982, the black population of the City of Philadelphia was roughly 35-40% (Jamal supporters have argued that this number is nearer to 45 - 50%). There are a total of 12 jurors in a capital murder case. In Jamal's case, three of twelve were black. This

amounts to 25% of the jury. In addition, Jamal personally excluded a "black" juror that had been accepted by the prosecution. Had Mr. Burgess been seated, the jury would have been 33% "black." This was hardly a racially stacked jury.

Despite the Supreme Courts ruling stating that this myth has "no merit", the Defense continues to twist the facts and states that their myth is the truth.

## **MYTH #4**

Mumia Abu-Jamal is a "political prisoner," who received his death sentence, because of his political ideology. The basis for this argument, according to Jamal and his attorneys, is the fact that prosecutor Joe McGill, brought up Jamal's political beliefs and his prior membership in the Black Panther Party, in front of the jury.

### **BRIEF REBUTTAL**

Mr. Jamal was sentenced to death by a jury that heard the monumental amount of evidence pointing to his guilt as a murderer. The record clearly and repeatedly shows, that it was Mumia Abu- Jamal who openly and frequently chose to proclaim his own political beliefs before the jury, not the prosecutor. The basis for Jamal's sentence was the violent, cowardly and premeditated act he committed, not his political affiliation with the Black Panthers.

### **FACTS SUPPORTING OUR REBUTTAL**

The record reveals that, from the first day of jury selection and throughout the trial, it was Mumia Abu- Jamal, not prosecutor Joe McGill, who, in full view of the jury, attempted to make the courtroom a forum for his political beliefs. Virtually every day of the 1982 trial, Jamal demanded to be "represented by" Mr. John Africa, the leader of a violent anti-government group called Move. In a previous highly publicized trial, several Move members had been convicted of murdering of another police officer, James Ramp, in 1978.

In 1982, Move was an organization that was well known throughout Philadelphia for its violent clashes with police and for its civil disruptions. Dozens of Move members crowded the 1982 courtroom, wearing their distinctive dreadlock hairstyle, and taking every opportunity to disrupt the trial proceedings. The Move

members that attended the 1982 trial, many of whom would later die in the 1985 Osage Avenue conflagration, refused to stand when the judge entered the courtroom. When forced to do so, under threat of removal, they stood with their backs turned to the judge, or thrust their arms out in a Nazi salute. Several Move members were involved in fistfights in the courtroom, and regularly shouted out insults at the judge and at witnesses. Additionally, the record reflects that several Move members were used as "legal runners" by Jamal, often conferring with him at the defense table. All of this was done in full view of the jury. Mumia Abu-Jamal's incessant demands to have John Africa, the leader of this group, "represent" him, was a clear statement to the jury of his political affiliation with Move. With repeated loud outbursts in the courtroom, in full view of the jury, Mr. Jamal fought with the judge, questioned the authority of the U.S. legal system to try him, insulted the prosecutor and openly ridiculed his own defense attorney, Anthony Jackson. One can only imagine how the jury reacted to Jamal's clear support for, and attachment to, Move.

In the transcripts we find that Mr. Jamal informs the court that he doesn't care what the jury hears, and that he will interrupt the proceedings again and again, as he sees fit, until John Africa is permitted to represent him.

Court- "You realize if you interrupt in front of this jury, I'm going to have to remove you again."

Defendant- "Judge, you can remove me again and again and again and again and again and again. I'm going to point out to you what is important to me; that this is my trial; that this man [Mr. Jackson] is your employee, not mine; that he is functioning for the court system, not for me; he is not doing what I am telling him and directing him to do but what you are ordering him to do. So I choose to sit down because you can hear me from the seat."

Court- "Okay."

Defendant- "And I would like to have John Africa appointed to assist me in this matter."

Court- "Denied."

Defendant- "Judge, you can call the jury in and I don't care if they hear it, frankly, because it's the truth." (6-24-82, T.R. 85)

There are dozens of examples of Jamal's demands to be

"represented by" John Africa, these are just a few:

Defendant: "I'm attempting to get counsel of my choice. I'm attempting to get John Africa."

Court: "I'm telling you Mr. Jamal, if you disrupt the proceedings, I'm warning you --"

Defendant: "Judge, your warning means nothing to me. Do you

understand that?"

Court: "And I'm telling you, you may very well be removed as counsel."

Defendant: "You do whatever you have to do."

Court: "And Mr. Jackson will be put in."

Defendant: "Do whatever. It's not your choice, not his choice or Jackson's choice. I want my own counsel of my choice, someone I have faith in, someone --"

McGill: "Is that John Africa he's talking about?"

Court: "Yes, John Africa he's talking about."

Defendant: "That's right. You have not ruled to my satisfaction. This is my trial."

Court: "I don't care about your satisfaction."

Defendant: "Listen I do --"

Court: "There's satisfaction --"

Defendant: "I do."

Court: "-- in Appellate Court."

(6-17-82, T.R. 1.50-1)

Defendant: "I would like to have John Africa Represent me."

Court: "I know. It's there in the record numerous times. You don't have to put it in again. Will you please sit down so we can proceed with the trial?" (6-23-82, T.R. 6.118)

Defendant: "Judge, I am asking the question in the spirit of the proceeding. Obviously I'm not obstructing anything."

Court: "Yes, you are."

Defendant: "Again, I am not."

Court: "Yes, you are."

Defendant: "I would like to protest the continued presence of Mr. Jackson as my defense. He is not my counsel. My counsel is John Africa." (6-24-82, T.R. 19)

Having been unanimously convicted of First Degree Murder, Mr. Jamal chose of his own free will, and against his own attorney's recommendation, to read a rambling political statement to the jury immediately before they sentenced him.

In this statement Mr. Jamal called Judge Albert Sabo a "Black Robed Conspirator". (7-3-82, T.R. 11) It was Jamal, not prosecutor Joe McGill, as the defense contends, who first brought up the issue of Jamal's political affiliations. Mr. Jamal freely chose to make his political beliefs crystal clear to the jury when he quoted John Africa in his statement to them saying:

"It is the system that is guilty of the crimes of all that is criminal, all crimes are committed within the system not without ..." (7-3-82, T.R. 14)

In a final proclamation of his political affiliation with MOVE, Mr. Jamal had this to say to the jury that was about to sentence him:

"This decision today proves neither my guilt nor my innocence. It proves merely that the system is finished. Babylon is falling. Long Live Move. Long Live John Africa." (7-3-82, T.R. 16)  
Those who feel the Prosecutor first brought up Mr. Jamal's political beliefs, simply choose to ignore the record of Jamal's own words, contained in the court transcripts. Contrary to what Jamal's supporters contend, it was Mr. Jamal's intent from the very beginning of his trial, to make the jury aware of his political beliefs, to transform himself into a victim of an allegedly corrupt legal system, and to make his trial a political referendum, on Move.

#### QUESTIONS ABOUT JAMAL'S BLACK PANTHER PAST

It is often argued by Jamal's supporters, that prosecutor Joe McGill violated Jamal's civil rights when, in the sentencing phase of the trial, McGill asked Jamal about his personal philosophy on violence. While doing so, McGill questioned Jamal about quotes he had made as a young Panther, in a 1972 newspaper article. Jamal's attorneys argue that this line of questioning violated Jamal's First Amendment rights. The basis for their argument is a 1992 case, called Dawson vs. Delaware. Jamal's attorneys argue, that in Dawson, a white supremacist, who was a member of a prison gang known as The Aryan Brotherhood, had his conviction overturned, due to the fact that the prosecutor had improperly referenced his affiliation with this prison gang, which was known to be racist and violent. They contend that McGill's questioning of Jamal regarding his Black Panther past, was a situation identical to Dawson, and therefore, his conviction should be overturned.

#### WHAT REALLY HAPPENED DURING THE SENTENCING PHASE?

The trial record clearly shows, that after Jamal had been "sworn in" by the court, and after he had expressed his political beliefs to the jury in the lengthy statement he had read to them, Assistant DA Joe McGill questioned Mumia Abu-Jamal about various political quotes he had made in the past. In particular, McGill focused on a quote Jamal had offered in a newspaper interview, when he was a young Black Panther. In that interview, Jamal had stated, "All political power grows out of the barrel of a gun." While questioning Jamal in 1982, McGill asked Jamal several times, if he still subscribed to this political philosophy. Jamal danced around the question, stating that history had proved this philosophy to be true, loosely affirming his continued belief in Mao's statement. He also stated that the Panthers would take "whatever actions where necessary," to respond to perceived police and government oppression.

Jamal's current attorneys argue that this line of questioning violated Jamal's civil rights. Prosecutor Joe McGill and the Philadelphia District Attorney's Office, argue that this line of questioning was permissible and appropriate, in order to counter and rebut earlier testimony given by Jamal's character witnesses, in which they stated that Jamal, "was a peaceful man". It was while being questioned about this quote and the philosophy it represents, that the issue of Jamal's past membership in the Black Panther Party came up. The Pennsylvania Supreme Court has already reviewed this argument and unanimously found it to be without merit.

#### WHAT THE 7 MEMBERS OF THE SUPREME COURT FOUND

The Pennsylvania Supreme Court had already been asked to review this allegation, when they reviewed Jamal's original Direct Appeal, in 1989. At that time, they found that this argument had no merit. Subsequent to that review, in 1992, and 10 years after Jamal's conviction, Dawson vs. Delaware came into existence. In their 1995 PCRA appeal, Jamal's new attorneys again raised the argument regarding Mr. McGill's line of questioning. Upon their re-review of this issue, the 7 members of the Pennsylvania State Supreme Court found, in their 1998 Opinion, had this to say about this argument:

"In Dawson, the state, in order to rebut mitigating character evidence adduced by the defendant, introduced evidence that the defendant was a member of the Aryan Brotherhood prison gang. This evidence was introduced via stipulation, which proved only that an Aryan Brotherhood prison gang which entertains white racists beliefs, originated in California in the 1960's and that a separate gang in Delaware prison system calls itself the Aryan Brotherhood. The Court noted that had the prosecution offered the evidence it initially claimed it had, which would demonstrate that this is a white racist gang associated with drugs and violent escape attempts at prison, and that this gang advocates the murder of fellow inmates, the Court would likely have found no error in admitting evidence of the defendant's membership in that gang, since the violent nature of that gang would be relevant to rebut evidence of the defendant's good character. In other words, the Court made it clear that the admission of such affiliations of a defendant is proper only where there is evidence of the demonstrating some connection between that affiliation and the character evidence sought to be rebutted. In the instant case, [Jamal's case] Appellant's own quotes in the newspaper article evidence that the Philadelphia chapter of the Black Panther Party, to which Appellant belonged, would use violence if necessary to quell, what the Party perceived to be rampant police brutality

against Party members. Accordingly, the nature of the Party was amply demonstrated and the requisite connection between membership in the Black Panther Party and the character evidence presented by Appellant, specifically, that he was a peaceful and genial man, was met. Thus, this issue has been finally litigated and warrants no further review, even in light of the subsequent decision in Dawson." (Pennsylvania Supreme Court, Opinion of the Court, 1998)

#### WAS JAMAL A "PEACEFUL AND GENIAL MAN"?

Several months later, at the sentencing hearing, Jamal displayed his "peaceful" nature for all to see when he threatened Judge Albert Sabo in the courtroom, saying:  
"You are wrong. You have just been sentenced to death. You have just been convicted." (T.R. 5-25-83 Pg.165)

#### CONCLUSION

It seems clear, that Joe McGill's limited questioning about Jamal's Panther background, would have had little impact on the jury when compared to Jamal's daily courtroom outbursts, and his repeated proclamations regarding John Africa and Move.

## **MYTH #5**

Mr. Jamal was given only \$150 to mount his entire defense. A 1996 HBO-TV documentary, A Case for Reasonable Doubt, repeats this assertion and further states the Mr. Jamal had no ballistics expert nor a criminologist available to work for him at the original trial. HBO further contends that had Jamal been granted access to this support, the defense could have "blown gaping holes in the prosecution's case."

#### **BRIEF REBUTTAL**

Receipts were produced at the 1995 PCRA hearing to verify that Mr. Jamal received over \$13,000 to mount his defense in 1982. He had a criminologist, a ballistics expert, a personal court stenographer and several individuals functioning as "legal runners" that worked in his behalf in 1982. This was well in excess of the customary level of support offered to a defendant accused of murder in Philadelphia in 1982.

## **FACTS SUPPORTING OUR REBUTTAL**

Despite knowing that it's a blatant lie, Mr. Weinglass states in his article, The Trial of Mumia Abu Jamal, and again in his book "Race for Justice", "The court allocated only \$150 pretrial to the defense for the investigation of the case".

Now that this distortion has served its purpose, which was to gather sympathy for Mr. Jamal with the press and the public, Mr. Weinglass freely admits that Mr. Jamal actually received \$13,000 to \$14,000 in public funds with which to mount his defense, including the amount paid to Mr. Jackson. During the trial, Mr. Jackson never complained about the amount of funding he received, only the speed at which his people were paid by the court. To counter the slow pay situation, Mr. Jackson stated under oath that he "took money from his own pocket" and fronted the payments made to his investigative team.

In addition to the \$14,000 in public funds he received, Mr. Jamal also received an undisclosed amount of funding from various private support groups in 1982. This funding continues to this day. These were facts well known to Mr. Weinglass prior to publishing his writings. Yet he chose to spread the \$150 Myth to gain support for his client.

This is what Mr. Weinglass himself had to say in his 1995 closing argument about the funding that Mr. Jamal received: "Your Honor will recall the total amount of money that Mr. Greer [Jamal's investigator] received was \$562." (9-11-95, T.R.55) In fact, Mr. Greer testified that he had only billed one hour for every four hours that he worked on this case, therefore, Jamal actually received the equivalent of \$2,248 in investigative assistance. (The amount shown is 1982 dollars, which would be more in the order of \$6,000 today.)

Mr. Weinglass also stated, "The monies for Mr. Fassnacht, the [defense] firearms expert, was raised to \$350." (9-11-95, T.R. 56) Unless our math is wrong, this doesn't add up to \$150. Yet to this day, Mr. Weinglass will tell his audiences that Mr. Jamal only received \$150, because it supports their illusion and gains sympathy from Jamal's supporters.

### **HOW DID THE \$150 MYTH DEVELOP?**

Mr. Weinglass didn't arbitrarily pick the \$150 amount. Rather, he again twists the facts. To paint a distorted picture of this case that would gain sympathy for his client.

In 1982, it was standard practice in all cases for the courts in Philadelphia to allocate an initial amount of \$150 for each funding request they received from the defense. Both Jamal's attorney, Anthony Jackson, and by Mr. Jamal understood that the \$150

amount could be increased at any time by filing a written request and showing merit. At the 1995 PCRA hearing, receipts were produced verifying that Mr. Jackson did just this on several occasions prior to the commencement of the 1982 trial. In 1982, the court approved additional investigative funds in excess of \$1,300, that were over and above the roughly \$13,000 already allocated to Anthony Jackson to mount Jamal's defense. This amount, shown in 1982 dollars, would be roughly \$36,000 today.

DID THE COURT PROVIDE JAMAL WITH ANY SUPPORT TO MOUNT HIS DEFENSE?

Contrary to what the inaccurate HBO-TV documentary asserts, Mr. Jamal did in fact have both a criminologist, (Mr. Robert Greer), and a ballistics expert, (Mr. George Fassnacht), working for him during the original trial in 1982. These same "experts" were again hired by Jamal's current attorneys to do investigative work leading up to the 1995 PCRA hearing.

In addition to Mr. Fassnacht and Mr. Greer, the supposedly cash-strapped Jamal also had a photographer and a personal court stenographer working for him. His personal stenographer was to provide daily typed transcripts, allowing Mr. Jamal to personally review each day's testimony from his cell.

To evidence this, the following exchange took place:

Court- "It was brought to my attention, though, that you have engaged a private stenographer. Who is that?"

Mr. Jackson- "Judge, she is a student up at Temple University. We're attempting to accommodate Mr. Jamal's wishes. On Monday we will have a motion for Your Honor to allow two certified stenographers who would be able to provide him [Jamal] with daily copy." (6-17-82, T.R. 1.25)

Robert Greer, Jamal's criminologist, admitted under oath in 1995 that he billed 1 hour for every 4 hours he worked on this case.

When asked by Assistant D.A. Joey Grant: "*You only submitted a bill for 22 and one half hours, how much time did you actually work on the case?*"

*Mr. Greer responds: "Probably three times that much."* (8-1-95, T.R. 242)

The amount of private funds contributed to Jamal's defense in 1982 is undisclosed at this time. However, a representative of the Association of Black Journalists, Mr. Lynn Washington, stated in an interview given to National Public Radio in 1992, that his organization offered to provide Jamal with a "top notch [defense] attorney", but Mr. Jamal refused their offer.

The court record reveals that Mr. Jamal presented 15 character witnesses in 1982. Each spoke of him as a valued and prominent member of their community. These individuals were some of the most prominent people in Philadelphia at the time. When asked by the District Attorney how much money they had contributed to Mr. Jamal in support of his defense, while under oath, each one stated that they had not donated a single dollar to Jamal's defense fund. This in the hour of Jamal's greatest need. Is this case credible? Mr. Jamal's supporters like to throw out wild claims of conspiracy against him. We suggest they look in their own back yard and determine what these 15 people and Jamal's attorneys are hiding. Then they will see how much money and resources were really offered to Mr. Jamal in 1982.

### WHY DIDN'T JAMAL HAVE HIS BALLISTICS EXPERT OR A FORENSIC PATHOLOGIST TESTIFY IN HIS BEHALF AT THE TRIAL?

Those who support Mumia Abu-Jamal take every opportunity to imply that there was a vast conspiracy to convict him. Mr. Weinglass has scripted a list of issues that when taken for face value, apparently verify or imply that this conspiracy actually existed. Whenever possible, Jamal's supporters are quick to repeat these semi-factual sound bites to their new recruits, or to any willing media source willing to listen to them. More often than not, these individual repeat these alleged "facts" with blind faith in Leonard Weinglass; assuming that what he states is always true and accurate. What they fail to account for is the fact that Leonard Weinglass, has repeatedly distinguished himself as a master at manipulating the facts of this case and that he is willing to say almost anything if it benefits himself or his client. The issue regarding Jamal's access to both a Forensic Pathologist and a Ballistics Expert at the time of the trial is a gleaming example of this situation. Jamal's supporters often repeat Mr. Weinglass' assertion that "Jamal was not represented" by either of these experts. The inference being that the court (read the villainous Judge Sabo) denied Jamal access to these allegedly vital experts.

The reality of this situation is something entirely different. In fact, during the 1982 trial, neither Anthony Jackson nor Mumia Abu-Jamal ever called for either of these experts to testify in Jamal's behalf. The court was never petitioned by either Jackson or Jamal to appropriate funds to pay for expert testimony. Jamal was not "denied access to a ballistics expert and a pathologist to testify in his behalf". He and his attorney never asked to have either one made available to them to do so.

Additionally, at the 1995 PCRA hearing, George Fassnacht was asked several times by ADA Joey Grant, if he had been called to

testify in Jamal's behalf at the 1982 trial, would he have testified that the findings displayed by the prosecution's ballistics expert were inaccurate. In each case, Mr. Fasschnact stated that he would not have refuted any of the prosecution's ballistics findings.

Rather, he said, he would have simply stated that the tests run by the state should be re-run by him to verify the accuracy of the findings presented by the Commonwealth.

At the 1995 PCRA hearing, when asked by ADA Joey Grant, the following exchange occurred:

ADA Grant: "Well, we now have what you didn't have, what you didn't have in 1981. Would you be willing to try a hand at it now?"

George Fasschnact: "Would I be willing to reexamine this evidence? No, I wouldn't." (8-2-95, T.R. 150)

At the 1995 PCRA hearing, George Fassnacht also acknowledged that both Leonard Weinglass and Anthony Jackson had failed to make him fully aware of all the facts surrounding the case that might influence the ballistics tests. For instance, George Fassnacht stated that prior to giving his sworn affidavit to Leonard Weinglass, he had never been told that Officer Faulkner's jacket had been put through such trauma after the shooting (the jacket being rubbed against the ground and the seats of two separate police vehicles prior to transport to the hospital and the application of the hands of the officers who carried Officer Faulkner to these vehicles). While testifying Fasschnact agreed that such trauma could have profoundly influenced the outcome of the prosecution's ballistics tests on the jacket. George Fassnacht also stated that he had never been told that Mumia Abu-Jamal had struggled with the arresting officers as they attempted to subdue and handcuff him. Again Fasschnact agreed that such struggling would have made it "difficult to perform any tests on Jamal's hands". (For more information on the ballistics evidence go to Myth #12)

Finally, though given ample opportunity to do so in 1995, the Defense has never substantiated any reason supporting their contention that the testimony of their ballistics expert, George Fassnacht, would have been substantially beneficial to Jamal in 1982. Mr. Weinglass' public statements inferring that the court somehow conspired to deny Jamal access to Fassnacht's testimony in 1982 are nothing more than another attempt to mislead Jamal's followers, and gain misguided and uninformed public sympathy for Jamal.

### CONCLUSION

Here is another example of the distorted truth that Jamal's attorneys and supporters are disbursing to the media and the public. To this day, when convenient, they continue to insist that

Jamal was given only \$150 to mount his entire defense. That Jamal was not given adequate assistance to mount his defense and that he was denied the representation of both a ballistics expert and a forensic pathologist.

## **MYTH #6**

The police intimidated and coerced witnesses, lost and withheld evidence in an attempt to frame Mr. Jamal and deny him a fair trial.

In their 1995 closing argument the defense states, "For almost 13 years the prosecution has promoted the false representation that the evidence in this case is overwhelming. In fact, it is more like a house of cards that has been propped up by prosecutorial and police fabrication, coercion, alternatively coercion and promises made to witnesses. And misrepresentation, destruction of evidence."  
(9-11-95, T.R. 23)

### **BRIEF REBUTTAL**

In a classic tactical ploy used by defense attorneys when their clients are guilty, we find Mr. Jamal's attorneys attempting to put the police and the legal system itself on trial. To date however, the defense has never actually established and verified one instance of police coercion, lost evidence, or conspiracy in this case that's stood up to scrutiny in the courtroom. Despite this, Mr. Weinglass continues to make these unsubstantiated allegations outside the courtroom for media consumption.

The defense regularly makes pointed allegations of criminal conduct against several parties in this case. If they have evidence to back their serious assertions, wouldn't they immediately present it to the proper authorities and let them proceed with a criminal prosecution of the guilty parties. Until such time, these allegations remain nothing more than a baseless ploy designed to deflect attention away from the guilt of their client.

### **EXAMPLES AND FACTS**

**CLAIM-** The defense claims a bullet fragment was lost or withheld by the police that would have allowed the bullet to be traced to a gun other than Mr. Jamal's.

**FACTS-** The Medical Examiner was never asked by the defense to account for any "missing bullet fragments" at the 1995 PCRA

hearing. The defense had their chance to prove for the record that a bullet fragment was actually missing and then verify that it had been lost by the police. However, no attempt was made to do so. Despite their many out-of-court assertions, the defense failed to introduce any such evidence at all in the 1995 hearing. To this day there is still no proof that any fragment is, in fact, "missing".

**CLAIM-** The Police allowed Cynthia White, a prostitute and witness for the prosecution, to "work the streets with impunity", and failed to disclose alleged police protection afforded to Ms. White in return for favorable testimony. This claim is based on an assertion made by another prostitute, Veronica Jones (who was mentioned earlier in this piece) and by Mr. Jamal's investigator, Robert Greer.

**FACTS-** Ms. Jones testified at the 1996 PCRA hearing. Beyond conversations Ms. Jones purported to have had with Cynthia White, Ms. Jones and Jamal's attorneys produced no tangible proof to back her allegations. In her 1996 testimony, Jones stated that White's alleged "deal" was made by police officers whose names Jones couldn't remember. Ms. Jones was also unable to remember when the alleged "deal" was made, or what the benefits to Ms. White were, beyond being permitted to ply her trade without being arrested.

At the 1996 hearing, Ms. Jones repeatedly appeared quite confused as to whom she had spoken to about anything in 1982. She stated that a factor contributing to her confused state in 1996 was her heavy drug use throughout the 1980's.

In addition to her alleged conversation with Cynthia White, Ms. Jones, who in 1982 had been arrested on an armed robbery charge, now claims that she too was visited by police officers while awaiting trial. She alleges that these officers offered her a deal similar to the one allegedly provided for Ms. White, and that they threatened to go hard on her in regards to her pending armed robbery charge, if she didn't co-operate with them.

Again, Ms. Jones recollection regarding the facts of her own alleged meeting with police in 1982 is very unclear. While testifying in 1996, she was unable to remember what the specifics of this alleged deal were and she failed to remember how the deal was to benefit her, beyond being given a break on her pending felony case. Further, Jones couldn't remember the names of the officers that allegedly visited her or when the visit occurred. The defense was once again unable to produce any corroborative evidence that this alleged meeting ever occurred or that any "deal" was made for Ms. Jones in 1982. Interestingly, in her 1996 testimony, Ms. Jones made it very clear that she never accepted any "deal" in 1982 to give false testimony against Mr. Jamal. Additionally in 1982, Ms. Jones never mentioned the alleged

police pressure, which included the offer of a deal directly connected to her pending armed robbery case, to the Public Defender who was representing her in that case. If any deal regarding Ms. Jones pending felony case had been struck, it would have come not from the police, but rather the District Attorney. The police have no authority to address how cases are dealt with in the courtroom and therefore they couldn't have held up their end of the supposed deal. Failure to do so would certainly have sent Ms. Jones running to the press. The District Attorney's records were reviewed by the defense in 1996 and there is no evidence of a deal being cut for Ms. Jones or Cynthia White in 1982.

#### LEONARD WEINGLASS' ACCUSATION DISCREDITED.

There is also evidence that completely discredits Mr. Weinglass' accusation that "police offered Veronica Jones the same deal that Cynthia White got". Mr. Weinglass claims the deal allegedly accepted by Ms. White was to allow her to work her corner unmolested by police if she gave testimony damaging to Mr. Jamal. Mr. Weinglass claims Ms. White accepted this offer and lied while testifying against Mr. Jamal in 1982. What Mr. Weinglass doesn't acknowledge is what Cynthia White's arrest record shows. When reviewed, it shows that Ms. White was arrested for prostitution twice within a week of giving the allegedly false testimony against Mr. Jamal. This fact dispels Mr. Weinglass' contention that Ms. White had a deal cut for her unless the deal was to last only a week. Mr. Weinglass had easy access to White's arrest record. Upon completion of her testimony against Mr. Jamal, Cynthia White knew she would have to go back out into a neighborhood where many people considered Mr. Jamal a folk hero. At great risk, Cynthia White came forward and testified to the truth. Unless she felt that being given a week "to work the streets with impunity" offset the threat that Jamal's supporters posed for her, we again find Mr. Weinglass ignoring the facts to support another self serving allegation.

#### THE ACCUSATION OF POLICE PROTECTION FOR CYNTHIA WHITE.

The accusation of police protection for Cynthia White came from Robert Greer, who was Mr. Jamal's investigator. Greer claims that on several occasions in 1982, he attempted to speak to Ms. White, who was working as a prostitute. Greer claims that on each of the three times that he saw Ms. White, there were two individuals parked next to her in a "little red car". The highly skilled Mr. Greer

determined that they must have been undercover police officers protecting Ms. White.

In Robert Greer's 1995 testimony he states, "They appeared to be plain closed police officers, Yes sir."

Assistant D.A. Joey Grant asks, "How does a police officer appear?"

Mr. Greer responds, "How does a police officer appear? I assumed that they were police officers simply because they never left the scene. If she was there, they were there."

(8-1-95, T.R. 188)

The basis of Mr. Greer's observation was the fact that every time Ms. White was there, the "little red car" was there. Yet Mr. Greer states that he only saw Ms. White on the street corner three times. For some unknown reason, the presence of this "little red car" scared off the highly experienced Mr. Greer. He testified that despite being hired by the defense to contact Cynthia White and having seen Ms. White on at least three occasions, he never actually attempted to speak with her. Mr. Greer further testified that the two men in the vehicle never identified themselves as police officers, nor did they ever speak to him at any time. He also states that he only saw the back of their heads as they sat in the car, and that he never attempted to get a better look at the individuals inside the car to verify their identity. These are all rather highly questionable actions by a seasoned investigator who was accepting payment to locate a witness in a capital murder case.

#### POLICE PROTECTION FOR CYNTHIA WHITE?

Mr. Weinglass claims that the DA never notified the court of the alleged police protection afforded to Cynthia White, in violation of the rules of the court. However, to date Mr. Weinglass has produced no substantive evidence in the courtroom to corroborate his allegation that Cynthia White received police protection. Furthermore, there wouldn't have been any rational reason for the District Attorney's Office not to have notified the court, had protection been afforded Ms. White. The DA had previously notified the court that there were other witnesses in this case who were openly given police protection prior to and during the 1982 trial. The Jamal trial was a very high profile, emotionally charged case. By the time it went to trial, Mr. Jamal had taken on a rabid cult following in Philadelphia's inner city. It wasn't unreasonable for the police and the DA to be concerned that witnesses testifying against him might be assaulted or intimidated by Mr. Jamal's supporters. There is in fact evidence that this type of intimidation against other witnesses actually occurred in 1981.

## MYTH #7

Jamal's supporters allege that the Philadelphia Police, who have a reputation for intimidating and framing defendants, fabricated a story about Mr. Jamal's confession at Jefferson Hospital on the morning of the killing. They point to the fact that the two police officers that heard the confession didn't report it until 2 months later, and that one of them, Officer Gary Wakschul wrote in his report, "The Negro male made no comments." Therefore, they surmise, their testimony is not true.

According to the HBO documentary, Mr. Jamal, himself, has evidence verifying that a "secret meeting" was held between the District Attorney and Police Officials prior to the trial. The Defense claims that Mr. Jamal's hospital confession is a police fabrication orchestrated with the help of the District Attorney's Office. In their incredibly irresponsible and factually inaccurate documentary, HBO actually allows Mr. Jamal to state that the D.A. entered the room and said, "Anybody got a confession or anything."

In support of this allegation, HBO and Jamal's supporters cite a statement made by Dr. Anthony Colletta, the physician who attended to Mr. Jamal at the hospital in 1981. In this statement Dr. Coletta says, "From the moment I was with him, he [Jamal] never made this statement." Dr. Coletta's comment is made in reference to Mr. Jamal's outburst at the hospital where three individuals heard him shout, "I shot the mother fucker and I hope the mother fucker dies!" Jamal's supporters feel Dr. Colletta's statement is evidence that the story of the hospital confession was a police concoction.

### **BRIEF REBUTTAL**

Besides the two police officers who came forward several weeks after the shooting to report that they heard Mr. Jamal's statement, *a hospital security guard reported to her supervisor in writing that she too had heard the same confession the day after the shooting. A copy of a hospital report was produced at the 1982 trial verifying her testimony.* Her report reconfirms the security guards testimony and corroborates what the officers heard that morning and reported later. Mr. Jamal's supporters rarely mention the testimony of this security guard because her testimony corroborates the testimony of Officer Bell and Wakschul.

### **FACTS SUPPORTING OUR REBUTTAL**

Jamal supporters often claim that any person hearing Jamal's outburst in the hospital would have reported it immediately. They rarely mention that a hospital security guard, Ms. Priscilla Durham, did just this.

Ms. Durham stated under oath that she had no idea who Mr. Jamal was when he made the statement. She also stated:

"At this time I didn't know [who he was]... all I did was hear him say, I shot the mother fucker and I, hope the mother fucker dies." (6-24-82, T.R. 28)

She further stated:

"When I opened the door and told the police officer which way to bring him [Mr. Jamal] they were still, you know trying to control him. He again shouted, I shot the mother fucker and I hope the mother fucker dies." (6-24-82, T.R. 30)

When asked where Jamal was when he made these statements, Durham replied:

"He was at my feet." (6-24-82, T.R. 28)

Having heard all the commotion downstairs, Ms. Durham, who was employed by the hospital, not the police department, had come down to the area adjacent to the emergency room to see if she could assist in any way. Upon hearing Mr. Jamal's incriminating outburst not once, but twice, Durham reported it to her hospital supervisor in writing the following day.

While testifying in 1982, Ms. Durham verifies the fact that she gave a written statement to her supervisor the following day in the following exchange:

Durham: "I had already given a statement."

Mr. Jackson: "To whom?"

Ms. Durham: "Jefferson [Hospital] investigators."

Mr. Jackson: "When did you give that [statement]"

Ms. Durham: "The next day."

Mr. Jackson: "Your honor, I'd like a copy of that statement and I'd ask that before I proceed with my cross-examination I get a copy of the statement."

Assistant D A Joe McGill: "I would be – I've never seen one, Your Honor. It's Jefferson Hospital material. I would be very glad to have it brought over." (6-24-82 T.R. 47)

*A short time later, a copy a typed report was sent over from Jefferson Hospital. Based on the date stated on the report, it was made the day after of the shooting (12-10-81) to Jefferson Hospital authorities, not to police. It confirmed that Ms. Durham had in fact reported Mr. Jamal's outburst to her supervisor in the timeframe she had stated and it clearly stated the same facts of Mr. Jamal's confession that Ms. Durham had testified to in court.*

Today Mr. Weinglass, HBO-TV, and author Stewart Taylor, conveniently disregards Ms. Durham's testimony and her report, stating that, since she had hand written her original report to her

supervisor and hadn't signed the typed version displayed in the courtroom in 1982, the report is meaningless. Mr. Weinglass even went so far in his 1995 PCRA closing argument as to say that while testifying in 1982, Priscilla Durham actually "disavowed" the facts contained in her 1982 statement. Again, we find that the exact opposite is true. In 1982, having just reviewed the hospital report that was handed to her while she was on the witness stand, Ms. Durham is asked:

Jackson: "So any statement that would be presented to you that purports to be your statement would be a guess on your part is that right?"

Ms. Durham: "No."

Mr. Jackson: "It wouldn't be a guess?"

Ms. Durham: "I'd know if I said it or not." (6-24-82, T.R., 99)

#### THE DEFENSE ATTACKS AGAINST PRISCILLA DURHAM

Two Officers, Bell and Wakshul, while being questioned in February 1982 by Police Internal Affairs Officers regarding Mr. Jamal's police brutality claim, stated they also heard Jamal's confession. At the time they made their statement, the officers had no knowledge of the written report that Ms. Durham had made to her supervisor the day of the shooting.

The Defense has no response for the fact that Ms. Durham, who was not employed by the Police Department, reported what she heard within hours of the shooting. They have, however, attacked her personally, stating that she was a personal friend of Officer Faulkner, and that she was susceptible to police coercion. They have also inferred that the hospital report itself is false.

Was Officer Faulkner a friend of Ms. Durham's? Priscilla Durham claimed to have spoken to Officer Faulkner prior to the shooting while she was working at the hospital, but she stated while testifying in 1982, that he was simply a very casual work acquaintance and not a close friend. She stated that the extent of their relationship was that they had, on occasion, had a cup of coffee at the hospital.

Did she hate Mr. Jamal? Durham has stated under oath that she had never heard of Mr. Jamal prior to the incident and that she had no idea who he was when he was brought into the hospital.

Was Ms. Durham put up to it by the police? If so, why would the police wait several weeks before bringing their two officers forward to corroborate Durham's statement? This gap in time would certainly cast doubt and scrutiny on the validity of the statement, as well as the Officer's testimony.

If Priscilla Durham fabricated the confession, how could she know, only hours after the shooting, what to say in order to coordinate her statement with the "official" prosecution version of events? It

defies all logic that Durham, a private citizen, would expose herself to a felony conviction and jail, by making a false report about a murder to police.

In order to dismiss Priscilla Durham's testimony, you must also dismiss the Jefferson Hospital report as a fabrication. If you choose to do this, you must accept that someone at the hospital joined the police in their alleged conspiracy to "frame" Mr. Jamal, by creating a false report after the fact.

Additionally, had the police concocted the "confession" at the hospital, prior to her testifying in court, they would have had ample time to supply Priscilla Durham with a "phony hospital report" to support her story. Why would they wait until after she mentioned the report in her testimony, to suddenly bring it forward? These are the same police that Leonard Weinglass regularly alleges were so "skilled at framing defendants," that they organized five eyewitnesses (none of whom knew each other) at the crime scene, and in less than 20 minutes got them all to agree to give false testimony and tell substantively the same untrue story about the shooting. How could these skilled craftsmen be so effective at the crime scene in such a short time, only to make such a glaring mistake at the hospital? The defense' whole paranoid fantasy regarding the hospital report defies all logic and reason. Taken alone, the fact that the two police officers (Bell and Wakshul) reported hearing the hospital confession several weeks after the incident would significantly weaken its impact. However, Ms. Durham's testimony at the 1982 trial stating that she reported the same confession to her hospital supervisor only hours after the death of Officer Faulkner, corroborates the Officers testimony and bolsters it's validity. At the 1982 trial, a copy of the typed report was obtained from the hospital to verify Ms. Durham's testimony. It stands as a permanent record of Jamal's confession.

#### WHY HAD THE OFFICERS WAITED SO LONG TO MAKE THEIR REPORT?

In his book, "Race for Justice, Mr. Weinglass writes, "Wakshul wrote a police report immediately after the episode in which he describes being with Mr. Jamal throughout this period, noting "during this time the male Negro made no statements." Mr. Weinglass further states, "The jury, however, never heard from Wakshul because the police made him unavailable by sending him "on vacation."

When asked that question at the 1995 PCRA hearing, both Bell and Wakshul freely admitted under oath that they were emotionally overwhelmed and not thinking rationally at the time Jamal made his outbursts. They stated that they had just seen Officer Faulkner, their friend and partner, in the hospital with a substantial portion of

his head missing, and as stated by everyone, "there was total chaos" in the small emergency room that morning. In 1995, while being questioned by defense attorney Dan Williams, Officer Wakshul testified about his mental state the morning of December 9, 1981.

Williams: " Okay, You say you weren't mentally alert at times. Can you explain that for us?"

Officer Wakshul: "I was mentally alert when I assisted in getting Mr. Jamal into the hospital and placing him on the floor. At that point Mr. Jamal, there was some discussions, some talking going on all around, but I heard Mr. Jamal say I shot him and I hope the motherfucker dies. I was stunned at that point. I stumbled back into a little alcove and started to cry. Covering myself by going outside, closing up the wagon and getting myself together. I remember after that being in Homicide but I have no recollection of anything further that night until early in the morning of that morning, the following morning, when I was leaving work in my car, and running into a cement pole with my car. And at that point, I had more control over myself at that point." (8-1-95, T.R. 25) Officer Wakshul states in his 1995 testimony that once he heard Mr. Jamal's statement, everything became a series of "snapshots" to him. He has freely acknowledged that he was severely disturbed at the time he wrote his report. It may not be convenient for the prosecution, but the statement made in his report is consistent with his testimony today.

#### OFFICER WAKSHUL WAS NEVER "SENT AWAY ON VACATION".

Regarding the Defense contention that Officer Wakshul was "sent on vacation" so he couldn't testify in 1982, we find that Mr. Weinglass again puts his own spin on events in 1982. Court records show that Mr. Jamal wasn't representing himself at the time Officer Wakshul was called to testify, however, the record clearly reveals that Jamal was calling the shots as to how his defense was being mounted by Mr. Jackson. Jamal had already personally determined how to use the defenses preemptory challenges, he had determined who to call as character witnesses, and he had taken control of all of the witness statements, and refused to give several back to Mr. Jackson. At the outset of the trial, Judge Sabo had made it clear to both the prosecution and the defense, that they were to provide a list of all individuals that might be called as witnesses during the trial. Unknown to Mr. Jackson was the fact that Mr. Jamal had decided to withhold a name from the witness list. Apparently Jamal was waiting until the final moments of the trial to call his surprise

witness, Officer Gary Wakshul. Mr. Jackson made this fact known to the court on July 1, 1982, five weeks after the beginning of the trial. At this point, Jackson had completed his defense and he was in the midst of putting the defense' "character witnesses" on the stand!

In an article written for The American Lawyer, author Stewart Taylor suggests, "The idea that he [Wakshul] had heard Jamal confess but hadn't bothered to report it is patently incredible." At the 1995 PCRA hearing, having testified that both he and Jamal had seen and reviewed Wakshul's report in which he said "The Negro male made no comment." And having acknowledged that they felt Officer Gary Wakshul's testimony regarding his report would "blow the Prosecutions contention that Mr. Jamal confessed apart". Anthony Jackson stated that he and Jamal had both forgotten to call Wakshul as a witness and that both had neglected to add his name to the witness list. We can agree with Mr. Taylor that Wakshul's comments are difficult to accept. However, at least Officer Wakshul has the argument that having just seen his friend's dead body, he was in a stressful state of mind. We would argue that Mr. Taylor's contention that both he and Jamal first "forgot" to put Officer Wakshul on the witness list, then both forgot to call this same person, who was admittedly their best exculpatory witness, to testify is beyond "patently incredible". Mr. Jamal's plan backfired. By the time he and his attorney finally let the court know that he intended to call Officer Wakshul as a witness, Wakshul had left Philadelphia on his previously scheduled vacation.

Written records and the testimony of several individuals were produced at the 1995 hearing verifying that long before the trial began, Officer Wakshul had requested to take his vacation time over the two weeks leading up to the 4<sup>th</sup> of July weekend. The process of selecting vacation dates was done early in the year. It required the officer to pull dates blindly from a hat, in a process similar to a lottery. On his first day of vacation in June of 1982, the Defense, who were required to list all of their witnesses in advance, had not notified the court nor Officer Wakshul that they intended to call him to testify.

Despite this, Officer Wakshul voluntarily offered to remain in town the first week of his vacation in case either side chose to call him to testify. By the end of the week, Officer Wakshul hadn't been called, so he left town for the 4<sup>th</sup> of July week. Pursuing his amateurish strategy, Mr. Jamal chose to notify the court of his intent to call Officer Wakshul on July 1<sup>st</sup>, the final day of the trial. Officer Wakshul couldn't be located and therefore he was unavailable to testify.

The defense requested that a continuance be granted until Officer Wakshul returned. Judge Sabo was left to ponder the ramifications. At that point the trial had ground on for over six weeks. The prosecution had already completed their case and the defense had only 4 of their 15 character witnesses left to testify. A continuance meant that each juror would continue to be sequestered alone in their hotel rooms over the long holiday weekend. This would certainly create a situation ripe for juror misconduct. They could easily succumb to the temptation of discussing the facts of the case among themselves prior to the completion of the trial. If this occurred, there would be grounds for a mistrial, and the entire case would have to be heard again. Judge Sabo weighed these facts and he ruled that it would be unreasonable to grant the continuance. He told Mr. Jamal that he and his attorney had "goofed" by improperly waiting until the last moment to spring a surprise witness without first verifying that he'd be available to testify. The trial ended without Officer Wakshul's testimony.

#### WOULD OFFICER WAKSHUL'S TESTIMONY HAVE FREED MUMIA?

In their 1995 closing argument, the defense states:  
"...there are certain types of evidence to blow the lid off of a case. And it's rare for a defense counsel to have that kind of evidence that literally blows the lid off a prosecutor's case, but Wakshul's testimony is that sort of evidence. And that's why the jury should have heard that evidence. It goes beyond simply refuting the confession. It casts a pall over the entire prosecution case, because it proves the lie to the confession and it proves how low the prosecution was willing to go in this case." (9-11-95, T.R.12)  
This is a monumental overstatement by the defense counsel. There is no way for the defense to know what Officer Wakshul would or would not have stated had he testified in 1982. What the defense purports to be fact, is purely speculation on their part. It's logical to conclude however, based on Officer Wakshul's 1995 PCRA testimony that his 1982 testimony would have only served to bolster the damaging testimony delivered by the other two prosecution witnesses who heard the confession, Officer Bell and Priscilla Durham.

#### DID THE DA AND POLICE MEET SECRETLY TO FABRICATE A CONFESSION?

In the 1996 HBO documentary, Mr. Jamal himself tells us that there was a "secret meeting" held in which the DA asks the police who were present, "Anyone got a confession or anything?" As usual in this case, the defense offered no evidence at the 1995 hearing to support Mr. Jamal's assertion.

If the defense and Mr. Jamal had facts to back this allegation, they certainly would have produced it in 1995, in order to get it on the record and gain Mr. Jamal a new trial. However, as expected, this is just another myth dreamed up this time by Mr. Jamal himself. While reviewing Officer Wakschul's courtroom testimony, we discovered the foundation of Mr. Jamal's false assertion about a "secret meeting" between the DA and the Police.

While testifying in 1995 and being questioned by the defense, Officer Wakshul is questioned by Dan Williams about this meeting:

Mr. Williams: "Prior to the trial, did you met with any persons from the District Attorney's Office?"

Officer Wakshul: "I believe either in January or February of 1982, having a prep meeting with Mr. McGill in reference to this case." (8-1-95, T.R.78) So much for the meeting being secret.

Mr. Williams: "What do you mean by prep meeting?"

Officer Wakshul: "I believe he [McGill] was the assigned prosecutor and he was going over different facets of the case with a large group of parties. Police Officers I believe were the only ones, and detectives, who were present."

Mr. Williams: "So he was prepping several people at the same time?"

Officer Wakshul: "It was basically a large round-table discussion of events. I don't recall specifics of it. I believe that there were, there were some preliminary reports that he was going over, but I don't really recall in depth what happened."

Mr. Williams: "Did McGill explain to you at all that the reason to have a group meeting is to make sure that all the testimony conforms to each other?"

Officer Wakshul: " No, I don't recall any such--"

Mr. Williams: "You don't recall him explaining that to you?"

Officer Wakshul replies, "No."

Mr. Williams: "Did the subject of a confession ever come up?"

Officer Wakshul: "I believe it did."

Mr. Williams: "Was there any inquiry directed at you personally about the troubling fact that you had not mentioned the confession on December 9<sup>th</sup> or December 16<sup>th</sup> or thereafter until February?"

Officer Wakshul: "No, I believe what happened was Mr. McGill said did anybody hear his statement. I know I raised my hand, but I don't recall any further discussion about it." (8-1-95, T.R. 79)

Why would the Assistant DA call a meeting to conduct a confession in February of 1982, when Priscilla Durham had already reported the real confession in December of 1981? Once again, we find Mr. Jamal and his supporters twisting facts to support the idea that a sinister conspiracy was laid against him, when no evidence of one actually exists.

### CERTAINLY DR. COLLETTA WOULDN'T LIE ABOUT THE CONFESSION!

To fully understand the statement made by Dr. Colletta, you must go to both the HBO documentary and the court records. Dr. Colletta does in fact state, "From the moment I was with him, he never made this statement." What the HBO program chooses not to tell you, is what the court transcripts reveal.

In 1995, Dr. Colletta states under oath that he saw Mr. Jamal for the first time in a hospital room, which was located inside the front doors of the hospital. This room was adjacent to and separate from the hospital's Emergency Room. Several witnesses have testified that before the doctor saw him, Mr. Jamal was kept in front of the automatic doors outside the entrance to emergency room, in addition to the small room adjacent to the Emergency Room.

Testimony also verifies that the area outside the entrance to the Emergency Room is where Jamal made his incriminating statements. The transcripts further show that Dr Colletta had not yet attended to Mr. Jamal when he confessed to shooting Officer Faulkner.

The record also reflects that Mr. Jamal refused to accept treatment when he arrived at the hospital. Officers were required to get a written court order from a judge, before Dr. Colletta could treat Mr. Jamal. Dr. Colletta states that he was attending to Officer Faulkner before he determined that he "could do no more for him" and he approached Mr. Jamal to "recesistate him." In order for Dr. Colletta to touch Jamal, the court order would have to have been received. This took a considerable amount of time. It's clear that Mr. Jamal was inside or immediately outside the hospital for a long time, before Dr. Colletta was "with him."

*Dr. Colletta is telling the truth. Jamal made no statement while Dr. Colletta was with him, because Mr. Jamal had already made his incriminating statements before Doctor Colletta arrived to treat him.*

### WHY WOULD JAMAL CONFESS?

Jamal's supporters have made it a point to suggest that Mr. Jamal's background as a reporter would somehow preclude him from making an incriminating statement in front of witnesses. We fail to see how training as a journalist would have anything to do with ones words or actions when they are personally involved in such an emotionally charged situation.

Mr. Jamal had just been shot in the chest by Officer Faulkner! He claims to have been beaten by police on the way to the hospital and several people saw him violently resisting the officers who were attempting to carry him into the hospital. Given these circumstances, it's not hard to understand how in his fit of rage, Mr. Jamal lost control, forgot "his training as a journalist" and

blurted out his incriminating statement, "taunting police" and "boasting" as one witness described it.

### **CONCLUSION REGARDING THE CONFESSION**

If one wants to believe the defense allegation that the police and the District Attorney's Office conspired to concoct a bogus confession, then you must also believe that a private citizen, Priscilla Durham, and unknown Jefferson Hospital officials also voluntarily joined in this alleged vast conspiracy to frame Mr. Jamal.

It's understandable that Jamal's supporters, who often appear to be unaware of Priscilla Durham's written statement made the day after the shooting, would claim that Officer Bell and Wakschul's admissions were lies. The fact that the police officers came forward with their statements late in the game makes the evidence of a confession less than perfect, yet their statements are supported by Priscilla Durham's very credible testimony and the hospital report produced by the hospital. *You can disregard the testimony of both officers, but you can not explain away the testimony and statement given by Priscilla Durham.*

The alternative theory posed by the defense, that several individuals from several different and distinct organizations came together to conspire on their testimony and to fabricate a fake hospital report is clearly wishful thinking on the part of the Defense.

The jury heard all the evidence regarding the confession in 1982 and they found Mr. Jamal guilty.

## **MYTH #8**

Mumia Abu-Jamal was coming to the aid of his brother who, while handcuffed, was being brutally beaten by Officer Faulkner. Leonard Weinglass states in his article, "The Trial of Mumia Abu Jamal", "Mumia arrived at the scene only moments after the officer had pummeled his brother with his flashlight".

### **BRIEF REBUTTAL**

William Cook, Jamal's brother and the driver of the car that Officer Faulkner pulled over, has never alleged that he was "pummeled"

by Faulkner. How can Mr. Weinglass and Jamal's supporters make this claim when Mr. Cook, himself, hasn't?

## **FACTS SUPPORTING OUR REBUTTAL**

In 1982, William Cook, while being represented by one of the finest defense attorneys in Philadelphia, plead guilty to physically assaulting Officer Faulkner on December 9, 1981.

Several witnesses to the murder of Officer Faulkner have all testified that they saw William Cook initiate his attack on Officer Faulkner prior to the officer ever touching him.

Michael Scanlon, the gentleman from out of town, who witnessed the entire course of events stated:

"They were talking, the black man [Cook] spread-eagle in front of the car, and while he was spread-eagle he swung around and struck the officer in the face with his fist. At that point, the officer reacted, trying to subdue the gentleman [Cook], and during that time another man came running from a parking lot across the street towards the officer and the gentleman in front of the car." (6-25-82, T.R. 8.6)

The man Mr. Scanlon saw "running from the parking lot who" then shot Officer Faulkner in the back.

At the crime scene, William Cook was treated for a cut on his ear so minor; there was no need to take him to the hospital. There is no doubt Faulkner struck Mr. Cook, but only after Cook struck the first blow. *There is absolutely no evidence of a "brutal beating" or "pummeling", there is no evidence that Mr. Cook was hit with a flashlight, and no claims of a beating have ever been made by Mr. Cook at any time.*

On December 9<sup>th</sup>, 1981, pictures were taken of Mr. Cook's injuries. At the trial, these pictures were entered as evidence and Detective William Thomas was asked to describe what they showed.

Mr. McGill: "Have you reviewed those exhibits?"

Detective Thomas: "Yes, sir."

Mr. McGill: "Can you identify them?"

Detective Thomas: "Yes, Sir. These are the photographs taken of Mr. William Cook on December 9, 1981."

Mr. McGill: "Do they show any injuries of Mr. Cook?"

Detective Thomas: "Yes. They show a cut behind the left ear."

Mr. McGill: "You observed Mr. Cook, didn't you. At close range?"

Detective Thomas: "Yes, sir, I did."

Mr. McGill: "Did you observe, other than that cut, any other injuries?"

Detective Thomas: "No, sir, I didn't."

Mr. McGill: "Did Mr. Cook make any complaints about any other injuries?"

Detective Thomas: "No, sir, he didn't."

Mr. McGill: "As a matter of fact, did he ever make a complaint regarding that injury [to his ear]?"

Detective Thomas: "No, sir. I asked him did he want to be treated for it and he said no." (6-26-82, T.R. 118-19)

In addition to the photographs of Cook's ear which showed no evidence of "a brutal beating," the Police Radio Tape Transmittal reveals that the "pummeling" that William Cook received at the hands of Officer Faulkner could not have lasted any longer than a few seconds as described by Michael Scanlon.

At 3:51:08 AM, Officer Faulkner radioed, "I have a car stopped at ah 12<sup>th</sup> -- 13<sup>th</sup> and Locust." He then stated, "On second thought, send me a wagon 1234 Locust."

At 3:52:27 AM, another message was sent in by #601 stating, "We just got information from a passerby, there's a policeman shot at -- I think it sounds like it was at 12<sup>th</sup>".

These recorded radio transmittals verify that from the time Officer Faulkner exited his car and approached Cook's car, a total of no more than a minute and a half elapsed before Officer Faulkner was dead. Several witnesses, including defense witnesses, stated that Cook and Faulkner engaged in a short discussion before Faulkner asked Cook to spread himself out over the hood of the patrol car. Given the time that it must have taken for this conversation to transpire and given the time required for the "passerby" to travel from 13<sup>th</sup> and Locust to the point they spoke to #601, it is likely that a total of less than 30 seconds actually elapsed between the time Faulkner exited his car and the time he was shot.

In fact, there was no brutal beating. Nor did Officer Faulkner "pummel" William Cook, as Mr. Weinglass suggests. The time frame reflected in the Police Radio Transmittal Log clearly correlates with the response that Michael Scanlon gives in his testimony when asked how many times Officer Faulkner struck Cook in response to his attack:

Scanlon: "No more than three times on the shoulder, with what appeared to be his flashlight or a blackjack, in response to Cook's attack." (6-25-82, T.R. 8.25)

#### THE DEFENSE PLOY

We again find the Defense misrepresenting the clear facts of this case, this time to support their claims of "police brutality". If William Cook had been "pummeled" in 1982, his attorney would certainly have addressed it to the court that heard his case in 1982. This never occurred. The defense ploy, developed at a time

immediately following the Rodney King beating, is an attempt to gain sympathy from the public for Mr. Jamal. It has nothing to do with the guilt or innocence of Mumia Abu Jamal.

## **MYTH #9**

Mr. Jamal was not permitted to represent himself in 1982, which is a violation of his civil rights.

### **BRIEF REBUTTAL**

Mumia Abu-Jamal's personal battle with the court and his disruptive actions in the courtroom began long before he ever met Judge Albert Sabo. In 1982, Mr. Jamal's Preliminary Hearing was held before Judge Paul Ribner, a judge who was not known for being pro-prosecution. Mr. Jamal, who was required by law to act appropriately in the courtroom as he defended himself, had this to say to Judge Ribner, "I don't give a damn what you think [Judge], go to hell. What the hell are you afraid of? What the hell are you afraid of, you bastard?" (7-3-82, T.R.33)

It was evident to many who attended the 1982 trial that Mumia Abu Jamal and John Africa intended to make the courtroom a forum to dispense their personal political views from the outset of the trial.

While it is true that the law affords individuals the right to represent themselves if they so choose, the law does not provide for an unlimited right to represent oneself. Legal precedent dictates that anyone who chooses to represent them self at trial, must conduct their defense appropriately in order to retain there right to self-representation. The 1982 trial record clearly reflects that Mr. Jamal was given repeated opportunities to retain his "pro se" status in Judge Sabo's courtroom. Instead of conducting himself appropriately, as he was required by law to do, Mr. Jamal freely and repeatedly chose to disrupt the proceedings or refused to participate in them altogether. After several days filled with endless delays, inane arguments and contemptuous acts by Mr. Jamal, the judge instructed Anthony Jackson, Jamal's co-council, to assume control of his defense in Jamal's behalf.

### **FACTS SUPPORTING OUR REBUTTAL**

At his request, Mumia Abu-Jamal was permitted to represent himself in the initial stages of the trial, most notably throughout the Motion to Suppress and in the early stages of jury selection (voir dire). He questioned witnesses and personally addressed the court. He was given the opportunity to choose the jury that heard his case and at the outset of the trial, he was granted the opportunity to represent himself through the duration of the trial. The court records make it quite clear that from the beginning, Mr. Jamal coordinated and managed his own defense, often through Mr. Jackson and often to his own detriment. With his repeated tantrums and violent outbursts, by failing to cooperate with his court appointed counsel and by failing to inform Mr. Jackson of his off beat strategy until the last minute, Mr. Jamal regularly undermined the efforts of the experienced Anthony Jackson to mount a defense that would spare his life. Now Jamal's supporters and his new attorneys claim an argument of "ineffectiveness of counsel" at the 1982 trial. They do so despite the fact that more often than not, Mr. Jackson's failures were a direct result of Mr. Jamal's courtroom actions.

#### WHY WAS MR. JAMAL REMOVED FROM THE COURTROOM SO OFTEN?

Despite what Mr. Weinglass asserts in his book, anyone who attended the original trial in 1982 will corroborate that Mumia Abu-Jamal regularly disrupted the proceedings by flying from his seat with loud outbursts and insults. Even Jamal's own sister, Lydia Wallace, admits to her brother's courtroom misconduct in the HBO-TV docudrama, as does his friend, Lynn Washington, in his 1995 National Public Radio interview. The local Philadelphia newspapers regularly commented on Jamal's antics in Judge Albert Sabo's courtroom in 1982. The record reflects that Jamal was removed from the courtroom no less than 13 times because of his intentionally disruptive actions.

#### DID JUDGE SABO HAVE A PREDISPOSED BIAS AGAINST MR. JAMAL?

Leonard Weinglass and Jamal's supporters regularly misrepresent Judge Albert Sabo's legitimate efforts to maintain order in his courtroom as evidence of Sabo's alleged bias against Mumia Abu-Jamal. When the record is reviewed, it is clear that, Jamal was relieved of his "pro se" status because of his own outlandish and disruptive actions in the courtroom throughout the trial, not due to a "predisposed bias" by Judge Albert Sabo.

The 1982 trial record verifies that Jamal repeatedly attempted to goad Judge Sabo into removing him from the courtroom. Jamal intimidated prospective jurors to the point that several stated that they feared for their own safety. Despite this, Judge Albert Sabo

allowed the jury selection process to be substantially lengthened and altered to accommodate Mumia Abu-Jamal's extensive questioning of the prospective jurors.

Judge Sabo clearly had the legal right to deny Mr. Jamal the opportunity to control his own jury selection by taking over the questioning for both the prosecution and the defense at any time and for any reason. Yet the allegedly bias Sabo chose not to do so. Instead, he permitted Jamal to personally select the questions to be asked of each prospective juror and upon the completion of questioning each prospective juror, Sabo allowed Jamal to determine how each of his peremptory challenges was to be used. Throughout the jury selection, Jamal, who claimed to want to represent himself, demanded to have John Africa "represent him" and "question the jury in his behalf".

Upon entering the courtroom on the first day of trial, after having disrupted the proceedings repeatedly during jury selection, Mumia Abu-Jamal was again allowed to represent himself. He was clearly and politely told by Judge Sabo that he would be permitted to proceed "pro se" if he would "behave" himself and conduct his defense by the rules of the court. Mumia Abu-Jamal agreed, but within a matter of minutes, he again began his loud outbursts, demanding to have John Africa "represent" him. Jamal specifically refused to act under the rules of the court because, according to him, the system wasn't meeting his personal standard of justice. These are only a few examples of Mumia Abu-Jamal's daily routine in the 1982 courtroom: Defendant: "Judge, I have a statement."

Court: "If you have anything to say, say it at sidebar."

Defendant: "I need a microphone."

Court: "I don't have one."

Defendant: "You can get one."

Court: "You should have asked for one earlier."

Defendant: "I need one now."

Court: "You have to speak up and if you can't speak up then I may have to remove you and put in Mr. Jackson."

Defendant: "I don't care."

Court: "You can do whatever you want."

Defendant: "You can do whatever you want!"

Defendant: "I need a microphone."

Court: "I don't have a microphone."

Defendant: "You can get one, judge."

Court: "Lets go."

Defendant: "I need a microphone, judge."

Court: "I'm sorry."

Defendant: "Your sorry?"

Court: "Mr. McGill, please. [Let's proceed.]"

McGill: "Yes Your Honor."

Defendant: "I'm not finished!"

Court: "Mr. McGill, please."

Defendant: "I need a microphone."

Court: "You don't need a microphone now."

Defendant: "I need one now!"

Court: "You're speaking loud enough now, I can hear you."

Defendant: "I need everyone in the courtroom to hear me. I want everyone in the jury to hear me."

This game continued through several more pages of testimony, until finally, Mr. McGill states:

"That's the point, Judge. This trial is not a political platform for all the people and the media to hear what Mr. Jamal has to say. The purpose for a public trial is that this man get a fair trial and people be able to observe it." (6-17-82, T.R. 1.44-48)

Moments after this statement by Mr. McGill, Mr. Jamal disrupts the proceedings again:

Defendant: "I want a microphone and counsel of my choice."

Court: "I'm sorry, I have already ruled to all those points."

Defendant: "You have ruled judge? This is not to my satisfaction."

Court: "I don't care."

Defendant: "This is my life and my trial."

Court: "If you step out of line ..."

Defendant: "That warning doesn't mean anything to me." (6-17-82, T.R.149)

Then moments later:

Defendant: "I am going to renew my motion, Judge."

Court: "I already ruled on your motion."

Defendant: "You haven't ruled on it before I've spoken about it. I want John Africa to represent me."

Court: "I already ruled on that."

Defendant: "You haven't ruled on it to my satisfaction Judge."

Court: "That may be unfortunate. But I ruled on it."

Defendant: "Say what?"

Court: "I ruled on it."

Defendant: "You have not ruled on it to my satisfaction, Judge.

This man [Mr. Jackson] can't represent me. I don't want him sitting there in a position of defense, in defense of my life. I want you to speak to the issue, Judge, about my right to counsel of my choice, not your choice."

Court: "Let's proceed."

Defendant: "I'm not finished! I'm not finished speaking Judge!"

(6-17-82, T.R. 1.70- 1.71)

This running war of words occupied the entire first day of trial and continued as the second day began. The court transcripts are

riddled with dozens of interruptions like these, encompassing hundreds of pages. The patience shown by Judge Sabo is astounding.

Later in the trial we actually find Mr. Jamal instructing Mr. Jackson to embarrass himself as a lawyer by announcing to the court that the United States legal system doesn't define murder to Jamal's satisfaction.

Mr. Jackson: "My client--- I have been ordered [by my client Mr. Jamal] to make a motion. The charges against him I would ask be dismissed on the grounds that murder as previously defined by the courts has not been defined to the satisfaction of my client." (7-1-82, T.R.44)

### WHY DID JAMAL ATTEMPT TO DESTROY HIS OWN TRIAL?

*Mr. Jamal disrupted the proceedings on a daily basis by demanding that John Africa be permitted to "represent" him. Mr. Weinglass regularly argues that this is un-true, stating that the only reason Jamal disrupted the court proceedings on an almost hourly basis, was solely because he was not allowed to have John Africa sit as "co-council". The court record clearly reveals that this is not the case. Jamal in fact repeatedly demanded to have Africa "represent" him.*

*John Africa was the leader of a violent black anti-police, anti-government group known as "MOVE". Several years prior to the Jamal trial, MOVE members had been involved in the killing of another Philadelphia Police Officer (James Ramp). At the time of the Jamal trial, Mr. Africa had no legal training and he had no standing in the court. Yet Jamal regularly argued that the only person who could get him acquitted was John Africa.*

In the midst of the 1982 trial and prior to the first day of testimony, the Pennsylvania Supreme Court was asked to rule on Mr. Jamal's request to have Mr. Africa represent him. The Court stated that legal precedent and Pennsylvania law prohibited an individual with no standing in the court to represent an accused person at trial. Both Judge Sabo and Mr. Jackson clearly explained this fact to Jamal on several occasions. Despite this, Jamal continued to violently disrupt the proceedings in full view of the jury, demanding that Mr. Africa "represent" him.

Jamal repeatedly disrupted the first two days of trial (6-17-82 and 6-18-82). Having been given numerous warnings that if he continued in this fashion, he would be stripped of his "pro se" status, Jamal continued to prevent the trial from proceeding. After two days of non-stop interruptions and verbal bickering with Mr. Jamal, Judge Sabo finally had enough, and he removed Jamal from the position of lead counsel. He then assigned Anthony Jackson,

who had been serving as co-council, to function as Mr. Jamal's lead defense council from that point forward. Prior to Anthony Jackson replacing Mr. Jamal the following exchange occurred:

Court- "When I make a ruling you [Mr. Jamal] have an automatic exception to that ruling. It will be reviewed by the Appellate Court. I don't want to stand here and argue with you all day long on every ruling, I'm going to make throughout this trial."

Defendant- "Judge..."

Court- "I'm telling you now that if you continue that way I will have no alternative but to remove you as counsel, and you can sit in here. Mr. Jackson will proceed. And if you continue to disrupt this court while you're sitting here, I will then be forced to consider contempt proceedings against you."

Defendant- "Again, those warnings of contempt are meaningless to me."

Court- "I know that."

Defendant- "You are threatening me with death and you think contempt means something to me?"

Court- "I don't care, but I'm required by the law to advise you of this, what will happen." (6-17-82, T.R. 1.110-12)

Immediately after this admonishment by Judge Sabo, the following exchange took place:

Court: "And if you keep acting that way, you have to be removed from the courtroom." Defendant- "That's absolutely meaningless to me. I am not --"

Court- "That's unfortunate that it's meaningless to you."

Defendant- "Let me make a point."

Court- "It's unfortunate --"

Defendant- "Let me make a point!"

Court- "I want it on the record so that you understand that I have advised you that our United States Supreme Court has spoken on this question [of Mr. Africa], the Pennsylvania Supreme Court has spoken on this question, and I've ruled on the law and that's it. And if you don't like it, take me up --"

Defendant- "Judge, you have ruled on procedure. You have not ruled on law because there is no law."

Court- "I have no choice. As long as Mr. Jackson ---"

Defendant- "Mr. Jackson --"

Court- "--can represent you."

Defendant- "He cannot represent me because I'm representing myself!" (6-17-82, T.R. 1.110-1.112)  
Legal president clearly establishes that:

"When a defendant's obstreperous behavior is so disruptive that the trial cannot move forwards, it is within the trial judge's discretion to require the defendant to be represented by counsel." (United States vs. Brock, 159 F.3d 1077, 1079 (7<sup>th</sup> Cir. 1998)

Following two full days of Mr. Jamal's contemptuous acts, Judge Sabo finally had enough and this exchange occurred:

Court: "My position is that Mr. Jamal has been intentionally disrupting the orderly progression of this trial ---"

Defendant: "How!" Court: "--- and what I said in the very beginning, when I make a ruling that's it, you don't argue with the Court about the ruling ---"

Defendant: "Judge, fine!"

Court: "You have certain rights but what I said is this: My position is that you have deliberately disrupted the orderly progression of this trial. Therefore, I am removing you as primary counsel and I am appointing Mr. Jackson to take over as primary counsel." (6-17-82, T.R. 1.122)

#### WHY DID JAMAL PUSH JUDGE SABO OVER THE EDGE?

Again, the court transcripts are riddled with these types of verbal battles between Judge Sabo and Mumia Abu-Jamal. The 1982 transcripts reveal that on several occasions both prosecutor Joe McGill, and Judge Sabo acknowledge for the record that Jamal's demands for Mr. Africa to represent him, as well as his antics and tantrums in the courtroom, were in fact a off beat legal strategy promoted by John Africa.

These disruptions were in fact, a tactic that had been used by John Africa and several MOVE members prior to Jamal's trial.

Additionally, Bobby Seals, like Jamal a Black Panther, who was tried in the late 1960's as one of the Chicago Seven, had successfully used this same legal tactic to gain an acquittal. They believed that the disruptions would undermine a court proceeding and gain sympathy from the jury.

The trial record clearly shows that Jamal regularly conferred at the defense table with Ms. Teresa Africa, a prominent MOVE member. It was inferred by prosecutor McGill that Teresa Africa was serving as a "runner"; ferrying directions from John Africa to Mr. Jamal.

Further, statements made in the courtroom in 1982 by Mr. Jamal himself evidence this fact. On the record and before the jury Mr. Jamal states:

Defendant: " I'm fighting for my life according to the strategy of John Africa. You [Mr. Jackson] are not, working for me, I want you to get your ass up and out of here!"

Judge Sabo: "If there are any other outbursts in the courtroom, you

are going to be evicted!"

Jamal (jeers back at Sabo): "On the MOVE!" (6-28-82, T.R. 28.48)

These comments are a clear reference to Jamal's affiliation with MOVE and to the use of John Africa's strategy of courtroom disruptions.

After this outburst, Mr. McGill again asks the judge to have Mr. Jamal's comments entered into the court records so, he states, "They might be seen by future appellate court judges."

### CONCLUSION

By virtue of the fact that he was given numerous opportunities to continue "pro se" and still repeatedly refused to cooperate with the court in order to retain his "pro se" status, it is clear that Mumia Abu-Jamal never really intended to represent himself at the 1982 trial. He repeatedly suggests to the Judge and the jury, that he is not proceeding as he saw fit. Rather, he states that he was proceeding according to the wishes and directives of John Africa. For Jamal's supporters to now argue that the court was biased against Jamal, and somehow manipulated the system to deny him his right to represent himself, flies in the face of Jamal's words and actions in the 1982 courtroom. The Pennsylvania State Supreme Court, in their 1998 affirmation of Jamal's conviction and the fairness of his original trial, stated that Judge Sabo had demonstrated considerable patience in accommodating Jamal's courtroom antics regarding his "pro se" rights.

## *MYTH #10*

Mumia Abu-Jamal's current attorney and his supporters argue that Anthony Jackson, Jamal's court appointed attorney at the 1982 trial, was incompetent. They claim that Mr. Jackson had never tried a capital murder case in the past and he asked not to be assigned to this one.

It's alleged that Jackson did not interview any of the prosecution or defense witnesses prior to their testimony, and that he failed to call any mitigating witnesses prior to Jamal's sentencing.

In reference to Anthony Jackson, Mr. Weinglass states in his piece, The Trial of Mumia Abu Jamal, "The only inexperienced actor in Mumia's case was the court appointed attorney".

## **BRIEF REBUTTAL**

The trial record exposes the fact that Anthony Jackson was a highly experienced attorney, who came highly recommended by Jamal's own friends. Prior to the trial, Jamal interviewed Jackson several times. Unlike most defendants accused of murder, Jamal himself had input in Jackson's selection as court appointed Defense Counsel.

At the 1995 PCRA hearing, contrary to what Jamal's supporters portray as fact, Anthony Jackson himself testified that prior to Jamal's case, he had defended no less than 20 murder cases. Of those 20 prior cases, he lost in only 6 instances. Prior to Mr. Jamal, Mr. Jackson had never had a client sentenced to death.

For "five and a half years" prior to graduating from the prestigious University of Pennsylvania Law School, Anthony Jackson worked as an "evidence technician for the Philadelphia Police Department". In this capacity, he stated that he "did everything but question witnesses" and that he "gained a keen and in-depth understanding of legal science and investigative techniques". He had also "worked for several years as a private investigator". After graduating, Mr. Jackson "worked for a short time as an Assistant District Attorney" and he had also worked for a prominent Attorney in private practice, named Marilyn Gelb, who later represented Mumia Abu-Jamal in the first direct appeal of his conviction in 1989. For several years prior to accepting Mumia Abu-Jamal's case, Anthony Jackson had worked as the "director" of an organization called PHILCOP, which "represented individuals in police brutality lawsuits and also instructed attorneys on how to sue police departments".

Mr. Jackson's record clearly shows that he had never been "ineffective" in the past. In fact his background was well suited for the role of defense counsel in a murder case and his court record over the 20 murder cases he had defended is remarkable, given the fact that murder cases are considered by many to be the most difficult type of cases to defend successfully. If Anthony Jackson proved to be "ineffective" in Jamal's case, it was obviously not due to "inexperience" or "incompetence". Rather, it was due to Mr. Jamal's outrageous conduct in front of the jury and his refusal to cooperate with the experienced and formally trained Jackson as he attempted to mount a defense in Jamal's behalf. It's clear that Jamal's own actions weakened his defense and helped to seal his fate. The Defense now seeks to turn Mr. Jamal's self-destructive behavior in the courtroom to his advantage by suggesting that Mr. Jackson was "incompetent" and that it is Mr. Jamal who is the victim of his inability to gain an acquittal.

## **FACTS SUPPORTING OUR REBUTTAL**

While testify at the 1995 PCRA hearing, Mr. Jackson was asked by Assistant DA Joey Grant, "How many murder cases had you tried, sir, prior to December [1981], or I should say June the 2nd, of 1982?"

Jackson: "My best recollection is a minimum of 16, perhaps 20 cases, 20 murder cases before Mr. Jamal's case."

ADA Grant: "And how many of those defendants were convicted of first degree murder? Just round numbers if you can. Percentages if you can."

Jackson: "A half Dozen."

ADA Grant: "So out of 20 murder cases, six people were convicted of first degree murder. And ostensibly, those six faced the judgment of life or death by a jury, I presume?"

Jackson, "That is correct sir. Let me correct it. This is tough. I think there may have been two, possibly three that were convicted of first degree on waivers [of a jury trial], with the judge."

ADA Grant: "Nevertheless, the two possible penalties for first degree convictions are only a life or death sentence; is that correct?"

Jackson: "That is correct, sir."

ADA Grant: "Of those six people – that was prior to Mr. Jamal's –"

Jackson: "That is correct."

ADA Grant, "None of those people received a death sentence did they?"

Jackson; "No, sir."

ADA Grant; "And that's because you saved their lives through your oral skills, your intellectual prowess, and your advocacy as a lawyer; would that be fair to say?"

Jackson; "I appreciate the compliment, but I would assume that the facts of the cases helped a little bit too." (7-27-95, T.R. 92-93)

### **WHY DID ANTHONY JACKSON ASK TO BE REMOVED FROM THE CASE?**

Mr. Jackson did in fact ask to be released from the case. This request, however, was not brought on because he felt technically unable to defend Mr. Jamal. Mr. Jackson asked to be removed because Jamal subjected him to lengthy and repeated verbal abuse and because Jamal refused to assist Mr. Jackson in his attempts to mount a defense for him. Jackson also stated that he was uncomfortable in the roll of backup council, because there was not then, nor is there today, a set of standards established for the roll to be played by back up council.

This is just one example of the type of abuse Mr. Jackson took from the first day to the end of the trial.

Court: "The court wishes to advise you that you have Court-appointed counsel and, apparently, Court-appointed counsel will be ---"

Defendant: "I do not have Court-appointed counsel. I have a court appointed baboon!" (5-25-83 T.R. 166)

Mr. Jackson explained for the court the reason he wished to be removed as "co-counsel". In the courtroom the following exchange occurred:

Court: "He [Mr. Jackson] wants out because you want him out."

Defendant: "Let him speak. He knows his reason."

Jackson: "The reasons are many-fold, Your Honor. I feel uncomfortable in this position being back up counsel. I figured, number one, because of my legal training I could probably be a better lawyer than Mr. Jamal; at the same time, I recognize Mr. Jamal's right to self-representation and his choice of his own council. I understand what the law says. I don't want to be in a position of interfering with his right or in his selection of counsel. It puts me in an unenviable position of being forced to do something that, number one, I don't feel qualified and comfortable to do [function as backup council] and, number two, it's not being accepted by Mr. Jamal.

Your Honor, as you can well imagine, in any situation where you're representing someone, whether it's in this case or any other case, one of the keys to that defense is the co-operation of the client. But of course I don't have a client in this situation, because Mr. Jamal is representing himself. And I think to force me to remain in this situation where Mr. Jamal has said in no uncertain terms that he doesn't want me, puts me in a position of trying to force advice on someone who doesn't want that advice."

Court: "No. You don't have to force any advice on him. You're there to give him advice if he seeks it. If he doesn't seek it, he does so at his own peril."

Defendant: "Yeah, right, but I don't want his advice."

Mr. Jackson: " He has no faith in anything I say." Defendant: "I want the advice of someone that I have respect in and that's John Africa!" (6-17-82, T.R. 1.64-65)

*In addition to his desire not to have Mr. Jackson represent him, on several occasions Jamal stated out loud in the presence of the jury, that he "refused to be represented by any legal trained lawyer [because they were] all being manipulated by the court." Having heard this day after day, Judge Sabo stated that he felt there was no point to granting Mr. Jackson's request for release. Jamal had already shown that he couldn't be counted on to conduct himself appropriately while representing himself, and the Supreme Court had already stated that John Africa was out of the question. Mr. Jamal had already stated repeatedly that he wouldn't work with "any" alternative "legal trained attorney" and he had also turned*

*down the offer made by the Association of Black Journalists to provide an attorney of his choice for him, one who was not "hired by the judge".*

### CONCLUSION

On the court record, Assistant DA Joe McGill actually suggested that it was Mr. Jamal's strategy to badger the judge into removing Mr. Jackson, so he would have a basis for appeal, should he be convicted. Jamal's plan seems to have backfired, as it appeared only to undermine his defense and turn the jury against him. Not surprisingly, we now see the Defense fulfilling Assistant DA Joe McGill's 13-year-old prophecy by playing out Mr. Jamal's original plan. The facts are clear in this matter. Mr. Jamal repeatedly disrupted his trial in the presence of the jury, he demanded to take the case over in midstream, he stole precious time and resources from Mr. Jackson and he weakened his own defense by refusing to work with the highly skilled Anthony Jackson. Despite all of these damaging and self-defeating actions by their client, as a basis for a new trial, Jamal's current attorneys argue that Jamal wasn't given competent representation in 1982. The legal standard established to determine if a defendant received inadequate assistance of counsel is well established. In order for Jamal to establish his claim of "inadequate assistance of counsel" he and his attorneys must prove that:

"The circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place."

The law does not entitle a defendant to a flawless, mistake free legal defense. There is little doubt that Anthony Jackson made some minor tactical and procedural errors during this trial. However, none of these was so critical as to "change the outcome of the trial" nor did they "so undermine the truth-gathering process that no reliable adjudication of guilt or innocence could have taken place" as is the standard prescribed by law. It must also be remembered that many of the alleged "errors" made by Jackson were directly caused by the actions of his disruptive and uncooperative client.

Like all attorneys representing an indigent defendant Anthony Jackson worked with a limited budget, he had limited manpower, and in addition to surmounting the considerable eyewitness testimony pointing to his client's guilt, he had to mitigate the mountain of physical and circumstantial evidence against his client. Adding to these factors, Anthony Jackson had a client whose conduct, as stated by Philadelphia Inquirer reporter Marc Coffman in 1982, "was as bizarre as it was suicidal". Given the difficult circumstances that Anthony Jackson had to work with, he

did an outstanding job to maintain his composure and put together an admirable and vigorous defense for Jamal.

## **MYTH#11**

Jamal's supporters claim that Judge Sabo has sentenced more people to death than any other judge in the United States. They make the quantum leap of alleging that Judge Sabo was therefore biased against Mr. Jamal from the start. Jamal's support groups have often gone to great lengths to vilify Judge Albert Sabo in their propaganda. Wild statistics are thrown out regarding the Judge's propensity to sentence defendants to death. They claim that Sabo was the orchestrator of a sham trial that never afforded Jamal a chance for justice.

Mr. Weinglass writes in his article "The Trial of Mumia Abu Jamal", "The case was tried before the Honorable Albert Sabo, notorious for having put more people on death row than any other sitting judge in the United States." Mr. Weinglass has repeatedly stated that in 1982 Judge Sabo displayed clear and repeated bias against Mr. Jamal as he continues to today.

### **BRIEF REBUTTAL**

By any acceptable meter of professional standards, Mr. Weinglass has gone to astonishing lengths to attack Judge Albert Sabo. Mr. Weinglass even went so far as to use a newspaper interview to support and promote a demonstration by Jamal's supporters in front of Judge Sabo's home on a Saturday morning immediately before the 1995 PCRA hearing began. It would be logical to assume that these are not the kind of actions that endear a defendant or his attorneys with the judge. Given these tactics, in addition to Jamal's actions in the 1982 courtroom, it's not surprising that Judge Sabo has little tolerance for the Defense' games in the courtroom. As a strategy to gain sympathy for Mr. Jamal, Mr. Weinglass and Jamal's supporters regularly misrepresent Judge Sabo's legitimate attempts to maintain order and proper decorum in his courtroom, as bias against Mr. Jamal. The record shows that Judge Albert Sabo has presided over more Capital murder cases [those involving the Death Penalty] than any other sitting judge in the United States. It isn't surprising or unusual for him to have presided over more cases in which the jury

sentenced more individuals to death, than any other sitting judge in the United States.

Judge Albert Sabo has not sentenced Mumia Abu-Jamal to death. The jury made that decision after hearing all the evidence against him.

### **FACTS SUPPORTING OUR REBUTTAL**

Under the system of justice used in Pennsylvania the judge does not sentence the defendant to death. By state law, a jury of 12 citizens hears the evidence against the accused individual and they must unanimously agree to convict the defendant. Once the decision to convict the defendant has been made, the jury has two options: impose a life sentence or the death penalty. Again, based on the evidence against the defendant, the 12 person jury most decide unanimously to impose the death sentence. It may be argued that a judge, through his rulings, directs and sets the tone of the trial. However, it can also be argued that a judge reacts to the actions taken by defendants and the attorneys in the courtroom. In this case, the fact remains Judge Albert Sabo did not sentence Jamal to death. Mr. Jamal was unanimously convicted and sentenced to death by the racially mixed group of 12 jurors; the same jurors Jamal personally assisted in selecting. The Pennsylvania Supreme Court and the U.S. Supreme Court, on direct appeal, have already reviewed the same evidence and they too have upheld the jury's decision as just and accurate. Judge Albert Sabo has been a sitting judge since 1974. During his tenure he has almost exclusively presided over capital murder cases [those involving the death penalty]. If Judge Sabo has presided over trials where the jury has "sent more people to death row than any other sitting judge", it would be due to the length of his tenure and the fact that he presides exclusively over death penalty cases, not a pre-determined bias to convict.

### **WHO'S STATISTICS?**

The erroneous and misleading statistic that Judge Sabo has "sentenced more people to death than any other sitting judge", came from a report released by the NAACP (National Association for the Advancement of Colored People). Though their statistics may be correct, the NAACP can hardly be considered an unbiased source of information regarding matters of this type. Further, their notion has never been proven to be accurate. Despite this, the Defense is happy to present their allegation as if it were proven fact.

## JUDGE SABO RESPONDS TO THE DEFENSE

### ALLEGATIONS OF BIAS

Judge Sabo himself stated his view on the defense strategy to vilify him at the 1995 PCRA hearing. At that time, Mr. Weinglass had been attacking Judge Sabo in the local newspapers. While addressing the defense in the courtroom, Judge Sabo states, "*In the old days we lawyers had a saying: If you have the evidence on your side, argue the evidence. If you have the law on your side argue the law. And if you have neither the evidence nor the law, scream like hell! Now the news media has changed that to read as follows: If you don't have either the evidence or the law [on your side] blame the judge. Who else are you going to blame it on?*" (8-14-95, T.R.5)

The court transcripts show us over and over again that Judge Sabo was eminently fair, patient and un-bias, considering the innumerable contemptuous acts, endless disruptions and repeated delays perpetrated by Jamal in his crowded courtroom in 1982. In fact, the court record reveals that on numerous occasions, Judge Sabo stated the he had removed the jury from the courtroom so they would not be adversely influenced against Mr. Jamal by his own words and actions. One can only imagine how Mr. Jamal's actions effected the jury as they sat sequestered in a hotel for six weeks.

## **MYTH #12**

The ballistics information presented at the original trial was sloppy, flawed and contaminated. It was also inadequate, and failed to prove Mr. Jamal's guilt beyond a reasonable doubt. The Defense points to four areas regarding the ballistics evidence to support these assertions. First, they claim that the bullet wasn't fired from a .38 caliber gun (addressed in [Myth #1](#)). Second, the Defense argues that a Tract Metal Detection test should have been done on Officer Faulkner's jacket to verify what distance he had been shot in the back from. The Defense argues that if the results had shown that Faulkner had been shot from a substantial distance, it would support their contention that a third person, other than Jamal had fired the shot and run form the scene. Third, the Defense argues that a Neutron Activation Test should have been done on Jamal's hands to determine if he had recently fired a weapon. Finally, they assert that the police should have "sniffed"

the barrel of Mr. Jamal's gun to determine if it had been fired that morning.

In their docudrama "A Case for Reasonable Doubt", HBO-TV hammers some these assertions home with the use of a hired "ballistics expert", Dr. Herbert McDonald, who claims that the tests performed by the prosecution's ballistics expert did not meet the acceptable standard of the day.

The defense stated in the courtroom on several occasions, that the prosecution and the police conspired to either limit the ballistics tests that were done in 1982, or to suppress the results of some of the tests because they didn't produce the results needed to convict Mr. Jamal. They state in their 1995 closing argument, "Mr. Fasschnact [the defense ballistics expert] could have informed the jury that, as Ms. Wolkenstein [defense counsel] points out, that the tests that were done, [and] that were not done, was indicative of innocence." (9-11-95, T.R. 62-63)

## **BRIEF REBUTTAL**

HBO-TV was either lying or woefully uninformed about this case when they stated that there was "no Trace Metal Detection Test" was done in 1982, and that the prosecution ballistics expert found "no evidence of any gunpowder residue". In fact, a Trace Metal Detection test was done in 1982 and this test confirmed that there was "evidence of primer lead" (gunpowder residue) on Officer Faulkner's jacket. The results of the Tract Metal Detection test done in 1982 proved that Officer Faulkner had been shot in the back from a distance of no more than 24 inches away. Based on these results, there was no need to do additional alternative tests as the defense argues.

Mr. Jamal's hands weren't tested because they had been rendered un-testable. Several witnesses stated that Jamal struggled with police after the shooting, and that his hands had been cuffed behind his back once he was subdued. These two actions immediately contaminated his hands and would have invalidated the results of a Tract Metal Detection Test or a Neutron Activation Test had one been done. Further, Jamal was prepped for surgery at the hospital before a test could be run anyway.

The "sniff test", the act of sniffing the gun to see if it has recently been fired, is not an official ballistics test. Any Officer present at the scene could have said he sniffed Jamal's gun and verified that it had recently been fired. As stated in 1995 by George Fassnacht, Jamal's ballistics expert, while testifying, "[there would be] no way to prove the sniffing officer right or wrong in the courtroom." Jamal's own ballistics expert confirmed that the "sniff test", or sniffing the gun with ones nose, is simply an investigative

technique used by the police to help determine what might have happened at a crime scene in the absence of eyewitnesses. Several eyewitnesses told police at the scene that they saw Jamal shot the Officer with his gun, which was recovered at the crime scene next to him. Because of this, the Officers on the scene determined that there was no need to do the "sniff test".

## **FACTS SUPPORTING OUR REBUTTAL**

In order to follow the issues pertinent to dispelling the ballistics myths, it's important to understand how events unfolded after the shooting on the morning of December 9, 1981. Most importantly, remember that copious amounts of testimony tells us that Officer Faulkner, who was wearing a standard issue nylon police jacket that morning, was shot first in the back from a distance of 12-24 inches. He then fell to the sidewalk face up. Based on testimony, it's believed that he may have rolled from side to side in a fruitless attempt to avoid the additional shots that Mr. Jamal directed towards him as he lay on the ground with Jamal standing over him. Officer Faulkner was then shot in the forehead just above the eye, from point blank range. As stated so dramatically by eyewitness Michael Scanlon in his 1982 testimony, the impact of the final shot to the head caused Officer Faulkner's body to jerk and lift itself into the air several inches, coming to rest on the sidewalk again.

(6-25-82, T.R. 8.8)

Testimony also states that immediately upon their arrival at the crime scene, several policemen lifted Officer Faulkner from the ground by placing their hands and arms under his back. First they placed him in the back seat of a police car. He didn't fit, so they again lifted him in a similar fashion and carried him to a larger vehicle, again placing him in the rear seat on his back. Officer Faulkner was then rushed to the same emergency room that Mr. Jamal would later be taken to. There, he was again lifted in the same manner, with several policemen placing hands and arms under his back and carrying him to the emergency room. His clothing was immediately removed as doctors attempted to save his life.

These actions, beginning only moments after the shooting, included rubbing the jacket on the ground, being lifted and placed on ones back and being slid in and out of a car, would have contaminated Officer Faulkner's hands and his jacket, making most test results invalid and unreliable.

## **WHAT HAPPENED TO MR. JAMAL AFTER THE SHOOTING?**

After shooting, Mr. Jamal, who had been shot in the chest by Officer Faulkner, was seen by several witnesses, including defense

witnesses, to move away from Officer Faulkner's body and collapse on the curb.

Once police apprehended Mr. Jamal, versions of what happened to him differ. The police claim that Jamal was still in a rage and that he violently fought with them as they attempted to pull his hands behind his back and handcuff them. On the other hand, Mr. Jamal claims he was beaten by police after the shooting, placed in the police wagon on his back with his hands cuffed behind him, driven off and beaten again in route to the hospital.

In either event, both sides agree that a struggle occurred between Mr. Jamal and several police officers before he was subdued. His hands were handcuffed behind his back, and he was placed on his back in the wagon and taken to the hospital.

Once at the hospital, Mr. Jamal refused to walk to the emergency room. Several police officers were required to lift him and carry him to an area immediately outside the emergency room doors. Several witnesses at the hospital testified that he was kicking and screaming as the police brought him to the front doors of the hospital. He was placed face up, on the ground in front of the emergency room until space could be found for him inside the emergency room.

He had his hands cuffed behind him and he was later handcuffed to a hospital gurney while he awaited medical attention.

Mr. Jamal refused to accept medical treatment for a lengthy period of time. A court order from a judge had to be produced, requiring Mr. Jamal to permit doctors to attend to his injuries.

## **THE TRACE METAL DETECTION TEST**

In their documentary "A Case for Reasonable Doubt", HBO goes to great lengths to argue that there were no ballistics tests done on Officer Faulkner's jacket. They also claim that a Trace Metal Detection test should have been done to determine if there was evidence of nitrates on the jacket. In their docudrama, HBO-TV hired their own ballistics expert Dr. Herbert MacDonald, who stated that had such a test been conducted, it would have verified that no nitrates or nitrites were present on the jacket. This in turn would verify that Officer Faulkner was shot in the back from a distance greater than 24 inches. MacDonald and HBO infer that this result would confirm that Jamal was not the shooter. In their docudrama we see HBO's hired ballistics expert conduct a test in which he stretches and affixes a jacket, presumably identical to the one worn by Officer Faulkner though they never confirm this, on a square wooden frame. MacDonald then fires a shot into the jacket from a distance of two feet, with a gun allegedly similar to Jamal's. (HBO also fails to verify that the ammunition in their gun is identical to the Federal Arms +P ammunition found in

Jamal's gun.) Without removing the jacket from its stationary position on the square frame, and without putting it through the same trauma that Faulkner's jacket went through the morning of the killing, the HBO "expert" takes samples from the jacket. He claims to have tested these samples. Not surprisingly, MacDonald declares that his test verifies the existence of nitrates and nitrites (products of emission) on the jacket. He then declares that had such a test been done in 1982, it would have produced the same result. This in turn would have verified that Faulkner was shot from a distance greater than 2 feet, and this fact in turn would have exonerated Mumia Abu-Jamal.

### HBO FAILS TO RECOGNIZE THE 1982 BALLISTICS TESTS RESULTS

In their docudrama, HBO simply ignores the fact that there was a Trace Metal Detection test done in 1982. The results of this test confirmed the presence of primer lead (gunpowder residue) on Officer Faulkner's jacket. This fact, in turn, established that Faulkner had been shot in the back from a distance of less than 24 inches. *Only two people were seen by the five eyewitnesses to have come that close to Officer Faulkner, William Cook and Mumia Abu-Jamal.*

Dr. Tumosa, the prosecution's ballistics expert, stated at the 1982 trial:

"Tests for nitrates, combustion products of emission, were negative. Tests for lead indicated the presence of primer lead." (6-26-82, T.R. 15)

The Assistant District Attorney asked Dr. Tumosa to explain the significance of the test results in 1982.

ADA Joe McGill: "Now, you stated that the test for lead indicated the presence of primer lead. Would you tell me what you mean by that?"

Dr. Tumosa: "The second source of lead which may come about comes from the primer of the cartridge. When the firing pin of a weapon strikes this primer, the primer explodes, sets off the powder inside the cartridge. The cartridge then propels the projectile. The compound which sets off the explosion, is a lead compound. It is an organic lead compound, which is sensitive. So, at close distances, or a distance, the primer lead actually is blown through the barrel of a particular weapon much like – you can think of it in terms of a hose. If you hold a hose level, a projector of water will come out and hit the ground at a particular point. Well, the same thing will occur when the weapon is discharged. You have powder in the barrel. You have graphite's. You have unburned ammunition. You also have this primer lead coming out

much the same way water would come out of a hose held level and falls off at a particular distance." (6-26-82, T.R. 16-17)

ADA McGill: "Did you make any kind of findings in relation to any comparison of the primer lead around that particular hole [in the jacket]?"

Dr. Tumosa: "We determined that the weapon must have been twelve inches or less when discharged." (6-26-82, T.R. 17)

#### WHY DIDN'T THE TRACE METAL TEST SHOW NITRATES?

Unlike HBO, who claim that no test was done, Mr. Jamal's attorney acknowledged that the Tract Metal Detection test was done in 1982. The Defense suggests that this Trace Metal Test didn't show evidence of nitrates, which proves that Faulkner was shot from a distance greater than 2 feet. Therefore, they argue, someone other than Jamal shot Officer Faulkner. The Defense also argues that the test conducted by the prosecution's ballistics expert was flawed in some way because it shows evidence of Primer Lead but no evidence of nitrates.

*While testifying in 1982, Dr. Tumosa explains why the test would show primer lead and not show nitrates. When asked by the Assistant DA how this situation could have occurred, Dr. Tumosa replies:*

*"Well, there could be any number of reasons. Usually when we find that [the absence of nitrates] to occur, we find that some kind of agitation occurred to the items that we have looked at. I mentioned earlier—you can think of the nitrates as being rather large objects. When they hit something, they sort of set on the surface. They are not small. They don't defuse into the fabric. They are sitting on the surface. So, if one agitated the item, one could remove them. They could fall off or brush off while the primer lead, because it's a fine mist, is actually embedded very much into the fibers of the item." (6-28-82, T.R. 85-86)*

As we've explained, Officer Faulkner's jacket was rubbed against the concrete when he fell and several people ran their hands over the jacket while carrying him to the car. The jacket was also slide across a car seat going in and out of two different vehicles. It's not a coincidence that there were no nitrates found. Based on Dr. Tumosa's explanation, they had all been rubbed off. But the Primer Lead, which had defused into the fabric, remained and registered positive when the jacket was tested.

The unimportance of the fact that the test does not reveal evidence of nitrates is further stressed by the defense's own ballistics expert, George Fassnacht, in 1995. At the 1995 PCRA hearing, the Assistant DA asked George Fassnacht if he would have tested the jacket that he would have gotten a different result and used this result to prove Jamal's innocence.

ADA Grant: "Are you saying here, and would you have testified in 1982 to a jury, that within a reasonable degree of scientific certainty, finding this primer lead on his jacket, but not finding the other parts of the gunpowder residue [the nitrates] you want to find would show that Mr. Jamal's weapon didn't shoot that officer?"

Mr. Fassnacht: "No, I would have testified only after I had access to the weapon in question and had conducted my own tests." (8-2-95, T.R.130)

The record shows that the defense' issue regarding the lack of nitrates was addressed by Dr. Tumosa in 1982. The real question to be answered regarding the results of the Trace Metal Detection Test is this; if Officer Faulkner was shot from a distance greater than 12 inches as the defense claims, how do they account for the primer lead being on the jacket as evidenced by the test?

## **THE NEUTRON ACTIVATION TEST**

When an individual fires a gun, discharge from the weapon lodges in various areas on the shooter's hands. A test called a Neutron Activation Test or the Trace Metal Detection Test is used to look for evidence of these residues in hopes of finding them. If the test is positive, it's determined that that person has recently fired a weapon.

The Defense argues that the police were sloppy in their investigation for not having tested Mr. Jamal's hands to determine if he had recently fired a gun. They also assert that if the police did, in fact, test Mumia Abu-Jamal's hands, they got a negative result, one that would not get them a conviction. Therefore, the defense argues, the police must have conspired to hide the test results.

The prosecution's 1982 ballistics expert, Dr. Charles Tumosa, was questioned extensively on cross- examination regarding the use of the aforementioned ballistics tests. Mr. Jackson in 1982, like Mr. Weinglass today, was concerned that the police had chosen not to run a Neutron Activation test on Mr. Jamal's hands, to determine if he had fired a gun the morning of the shooting.

In response to Anthony Jackson's questions as to why this test was not run, Dr. Tumosa stated:

Dr. Tumosa: "I'm saying it [the test] doesn't give reliable results, uniformly reliable results. Many procedures are published in literature, which work very well in the laboratory, but when you take them into the field, they don't work. That [the neutron activation test] is one of the particular tests [that doesn't work well in the field]. The problem with it is that once somebody has touched something, they don't walk around with their hands in the air or protected. The instant someone touches their trousers, wipes their hands, or starts to sweat, bleed, rubs their hands in their hair,

immediately the test becomes invalid because of contamination. So, in cases where you have individuals who are active, in which you have a series of events which are fast moving, fast paced, the test becomes, for all intents and purposes, invalid. There is no way you can [reliably] interpret any results that you get." (6-26-82, T.R., 56)

Later Dr. Tumosa stated:

"The inherent concept behind the idea [of the Neutron Activation test] is very good if you are dealing with a laboratory situation or the classical locked room mystery, where the body is found in a locked room with a firearm in it's hand. The real world is much more complex. I wouldn't like to do the test and have the fate of any individual depend upon the results of that test." (6-26-82, T.R. 59-60)

Credible testimony reveals that, on December 9 Mr. Jamal fell to the sidewalk, fought with police and was handcuffed with his hands behind his back. Jamal claimed he was beaten. He was then carried by several police officers to the area in front of the emergency room doors where he was placed with his hands behind him on the ground. He was later prepared for surgery by hospital staff. By definition, hands were contaminated moments after he shot Officer Faulkner. Dr. Tumosa stated, that the results of any test done after any one of these actions would be useless in determining if Mr. Jamal had shot a gun that morning.

Anthony Jackson, Jamal's 1982 defense attorney, helps drive home the absurdity of Mr. Jamal's new defense attorney's argument; that the police should have tested Mr. Jamal's hands to determine if he had recently fired a gun. In 1982, when he asked Dr. Tumosa, what test he would perform to unequivocally determine if a person had held a gun.

Dr. Tumosa: *"There is no test, nor could there ever be any test short of having a photograph, an eyewitness or some other event of recording visually, perhaps, what went on."* (6-26-82, T.R. 73)

#### WHY WASN'T THE TEST RUN?

Ironically, testimony shows that there were 5 individuals who were "eyewitnesses" to Mr. Jamal shooting the gun that killed Officer Faulkner that morning. For this reason, there was no need to test Jamal's hands.

At the 1995 PCRA Hearing, Assistant District Attorney Joey Grant, while questioning George Fassnacht Jamal's ballistics expert, further addressed why no tests were done on Mr. Jamal's hands.

ADA Grant: *"If you were them, the Philadelphia Police, knowing the activity that I've described to you, that Mr. Jamal was engaged in [that morning], tell me when you would have snuck in there and*

*taken that test from him, at what juncture, at which struggle?"*  
George Fassnacht (Jamal's ballistics expert): "Well, if they [the police] really wanted to take the test and if there were enough officers on hand, I suppose he could have been spread-eagled and his hands held out and somebody grabbed a leg or two. It sounds preposterous, but if they were struggling that vigorously, I suppose that would have been the only way to do it. And in light of what you told me, that test may have been very difficult to perform." (8-2-95, T.R.120)

Further, Mr. Fassnacht agreed with the Prosecution that the rubbing of Jamal's hands would have invalidated the test. While being questioned in 1995 he stated:

"I believe I agree with you that being handcuffed with the hands behind the back could expose the web surfaces [of the hands] to the clothing and result in the loss of residue." (8-2-95, T.R. 120)

These statements, made by Jamal's own ballistics expert, demonstrate the absurdity of Mr. Weinglass and HBO's argument regarding the testing of Mr. Jamal's hands. Had a Neutron Activation test been run on Jamal's hands in 1982, it's logical to assume that the Defense would now be arguing that Jamal's hands were contaminated immediately after the shooting, and therefore the test results of that test are invalid.

## **THE "SNIFF" TEST**

The final example of "shoddy police work," alleged by the Defense, is the fact that police failed to "sniff" the barrel of Jamal's gun, to determine if it had recently been fired.

At the 1995 PCRA hearing, Assistant DA Grant asked George Fassnacht if the findings of a "Sniff Test" are valid and quantifiable results that could be supported in the courtroom.

ADA Grant: "Could that test [the sniff test] be reproduced so that the defense counsel, when they want to go back and say I want to test to see if that person's nose was accurate, can you reproduce that test so they can check it out?"

Fassnacht: "No more so than you could reproduce an eyewitness' vision of the scene, no, certainly not." (8-2-95, T.R. 179)

ADA Grant: "And except for your version of what your nose smells, you could say that right on the report, condemn an individual to a prison sentence or worse, and there is no way that they [the defense] can challenge it?"

Fassnacht: "That ["Sniff Test"] is a test that cannot be reproduced, if that's what you are driving at." (8-2-95, T.R. 179)

There is little doubt that had the "Sniff Test" been done at the scene, and it's results entered into evidence against Mr. Jamal by the Prosecution, the Defense today would be arguing as to its lack

of accuracy, and that it should not be admissible as evidence against their client.

Like the Neutron Activation Test and the Trace Metal Detection Test, the "Sniff Test" is merely an aid to determine what might have occurred at a crime scene. It's not an analytical "test" in the true sense of the word. Rather, it's an action, taken at the investigating officer's discretion, to aid in his investigation. There were 5 eyewitnesses to the shooting, each gave statements to the police that morning, and each told of Mr. Jamal having shot Officer Faulkner. Arguably, there was no need to sniff the gun to determine if it had been fired because several people had already told the police that it had been.

#### MORE EVIDENCE OF A FRAME UP

If police were going to try to falsify ballistics tests results to frame Mr. Jamal, the "Sniff Test" would certainly have been the easiest test to falsify. As we see from the testimony of both, Dr. Tumosa and George Fassnacht, it would have been easy for any officer to state that he "sniffed" the gun and that he smelled the odor of gunpowder, thus proving that it had recently been fired. As stated by the defense ballistics expert, there would have been no way for the defense to refute the findings, because this "test" cannot be reproduced nor quantified. Despite this airtight opportunity to frame Jamal, we find that not one officer made the claim that they smelled the gun. Had the Prosecution wanted to join in on the conspiracy, at any time prior to the trial, they could have coached an officer into saying he had "sniffed" the gun, but no such testimony was ever offered.

#### THE DEFENSE PERSISTS IN THEIR BALLISTICS ARGUMENTS

Despite having just heard the testimony given by the prosecution's ballistics expert, as well as their own ballistics expert, Leonard Weinglass still presented in promoting his allegations of police corruption and laboratory mismanagement for the record in their 1995 closing argument. In direct contradiction to the testimony offered by George Fassnacht, Leonard Weinglass stated: "And Mr. Fassnacht would have told that jury if that gun had been recently fired, the police and the police laboratory which had it within two hours, would have certainly known that gun was recently fired because you could still smell the odor of burned gunpowder for up to four to five hours after the gun was used. And there was no testimony that that gun had such an odor." Secondly, he would have said in the ordinary case of murder, no less a police shooting, when you have the suspect's hands available within five minutes, it's inconceivable that a test was not attempted

through neutron activation testing to see that this individual had recently fired a gun." (9-11-95, T.R. 63-64)

## **BALLISTICS CONCLUSION**

It's important to understand the facts stated above in order to comprehend the tactics employed by the Defense, with their ballistics issues. This tactic is a simple yet effective one. It's a courtroom version of the old "shell game," which allows them to argue the ballistics evidence, or lack of it, to their own advantage at all times, no matter what the circumstances.

The Defense tactic works like this: If a test is done, and its results incriminate their client as the Trace Metal Primer Lead Test does with Mr. Jamal, the Defense argues that it was flawed or contaminated. If a test was not done, such as the Neutron Activation Test in this case, the Defense argues that it should have been done, and that it was "shoddy police work" not to have done it. Even better yet, if a certain test was not done, the Defense can insinuate that this test may have been done, but its results actually exonerate their client. The Defense can then infer, that the police hatched a conspiracy to hide these results and frame their client. If the police choose to do one test, the Defense argues that an alternative test should have been done, and so on, and so on. Such is the game played by Mr. Weinglass, HBO-TV and their ballistics expert in this case.

Due to the circumstances of this crime, and the physical conditions of Officer Faulkner and Mr. Jamal immediately after the shooting, at the discretion of the investigating officers, certain tests were done and others were not. No evidence of conspiracy to cover up test results has ever been established by the defense, as Mr. Weinglass infers outside the courtroom. There simply is no evidence of shoddy police work either. The rationale used in determining which tests to do, and which ones not to do, have been shown through lengthy and detailed testimony to be technically sound, and the arguments made by the Defense have repeatedly been found to be without merit.

## ***MYTH #13***

There is only one prosecution witness that claims to have seen Mumia actually holding a gun. Therefore it's not possible to say beyond a reasonable doubt that Mumia shot Officer Faulkner.

## **BRIEF REBUTAL**

Cynthia White was in fact, the only prosecution witness to testify that she was close enough to the shooting to actually see the gun in Jamal's hand and describe it while testifying. However, several other legitimate eyewitnesses testified that they saw Mumia Abu Jamal standing behind Officer Faulkner, raising his arm, pointing at Faulkner's back and later his head, then hearing the shots discharge and seeing the muzzle flash from a gun.

## **FACTS SUPPORTING OUR REBUTTAL**

**Michael Scanlon**, the gentleman from out of town, having already stated that he watched Mr. Jamal run from the parking lot towards Officer Faulkner and William Cook, further states under oath: "I saw a hand come up, like this, and I heard a gunshot. There was another gunshot when the man got to the policeman, and the gentleman he had been talking to [Cook]. And then the Officer fell down on the sidewalk and the man [Jamal] walked over and was standing at his [the officer's] feet and shot him twice. I saw two flashes." (6-25-82, T.R. 8.7)

**Albert Magelton**, the pedestrian walking across 13<sup>th</sup> and Locust, first describes how he watched Mr. Jamal run from across the street, then states in his 1982 testimony:

"About half way across the street, I had turned to proceed across the street. I heard shots and I looked over and I didn't see the Officer there no more." (6-25-82, T.R. 8.77)

**Robert Chobert**, the taxi driver parked behind Officer Faulkner's car, while being questioned by Mr. Jackson stated:

Chobert: "No, I didn't see the gun."

Jackson: "Did you see the flash of the weapon?"

Chobert: "No, but I heard shots. And I saw him pointing his hand too."

Jackson: "So you assumed the shot must have come from the man who had his hand out?"

Chobert: "Because there were only two guys there [Jamal and Cook]!"

(6-19-82, T.R. 229-230)

Defense witness Robert Harkins, the other taxi driver who stopped across the street from the murder, in his 1995 testimony states:

Harkins: "He [the shooter] leaned over and two, two or three flashes from the gun. But then he walked, sat down on the curb."

(8-2-95, T.R. 209)

## **CONCLUSION REGARDING THE GUN**

Again we find the defense distorting the court record to serve their purpose. The record clearly reveals that five individuals, each of whom the court has deemed to be credible, say they saw and heard the same thing. Although not all of them say they were close enough to actually distinguish a gun in Jamal's hand, all say they saw him raise his hand, heard the shots, saw the muzzle flash from the gun and watched Officer Faulkner fall to the ground. Each witness has stated that the only people standing in between the cars were Mumia, his brother William Cook and Officer Faulkner. None of these individuals claims to have seen anyone run away. All of them say they watched the shooter take several steps and collapse on the curb, in the spot that police found Mr. Jamal only moments after the shooting. There is no doubt about who shot Officer Faulkner, even if these witnesses weren't actually able to distinguish the outline of the gun itself.

## **MYTH #14**

It seems that nearly everyone supporting Mumia Abu-Jamal has, at one time or another, stated that he is an "award-winning journalist".

On the cover of the paperback version of his book, "Live From Death Row", it states that Mr. Jamal was the recipient of the Peabody Award, a very prestigious broadcast journalism award, presented by the University of Georgia.

### **BRIEF REBUTAL**

While doing research on this case, ABC News contacted officials at the University of Georgia to verify Mr. Jamal's claim.

University officials told ABC, that there was no record of Mumia Abu-Jamal ever receiving the Peabody Award.

Originally, we assumed that Jamal's supporters would claim that this was just another example of the vast conspiracy against Jamal, and that "unknown officials" at the University of Georgia were the latest conspirators plotting against Mumia. In April 1998, ABC News ran a story on their San Francisco Bay area affiliate, KGO-TV, exposing, amongst several shams regarding Jamal, the Peabody sham. It was not surprising that Leonard Weinglass, Jamal's current attorney and public relations representative, publicly began doing damage control in Jamal's behalf, almost immediately. Instead of alleging conspiracy and cover up, as he

has in the past, Weinglass instead passed the blame for the erroneous information displayed on the cover of his client's book, to Jamal's publicist. Though the paperback version of "Live From Death Row" had been on the shelves for months before ABC ran their piece, Weinglass claims that he and Jamal were completely unaware of the misinformation displayed on the cover. He further alleged, that upon conferring with Jamal's publicist, it was determined that the wrong award had "accidentally" been submitted to Jamal's publisher, prior to the book going to print. All of this may be true. However, to the best of our knowledge, it was not until after ABC News ran their investigative report, and we displayed it on our website, that any public acknowledgement of this alleged "error" was made. It stands to reason, that Jamal must have received a copy of his own book, prior to its release. Therefore, it seems unbelievable to us, that ABC News noticed this alleged "error, " before Jamal or Weinglass had. It appears that had ABC not exposed this sham, Jamal, his attorney, his publicist and his publisher, would have been happy to permit the erroneous information about Jamal having earned the Peabody Award, to go uncorrected, and become the latest Myth about Mumia. Admittedly, this incident has nothing to do with Jamal's guilt or innocence, and our displaying this information could be construed as mudslinging. However, we feel that it is important to address this matter on this site, as yet another example of the deceit, which is regularly employed by Mumia Abu-Jamal, his attorney and his supporters.

## *TELL US WHAT HAPPENED*

**It must be noted that to date, Anthony Jackson, Leonard Weinglass, William Cook and Mumia Abu Jamal have never stated a plausible alternative to the Prosecution's depiction of the events surrounding the murder of Officer Faulkner.** As stated at the outset of this document, this is not a murder mystery. In addition to the 5 eyewitness who testified against Mr. Jamal, there are two other individuals who know exactly what happened at 12<sup>th</sup> and Locust Street on December 9<sup>th</sup>, 1981. Those two individuals are Mumia Abu-Jamal and his brother William Cook. Yet neither is talking. Mr. Jamal is apparently besieged with requests for interviews. Anyone who has an interview with Mumia bestowed upon them must play by his rules. These rules are quite simple; the reporter is

precluded from asking any questions pertaining to the events of December 9<sup>th</sup>.

Now that he has been convicted, the burden of proof in the courtroom switches away from the prosecution and to Mumia. Unless granted a new trial, he must prove himself innocent. The public is still waiting to hear what he and his brother have to say about what happened on December 9, 1981.

Until Jamal finally tells us what really happened that morning, if one chooses to believe that Mr. Jamal is innocent, then you must support and believe the defense's conspiracy theory. That theory goes something like this. The police, the FBI, the District Attorney's office, several prostitutes, several cab drivers, a businessman from out of town, a pedestrian, several doctors at Jefferson hospital, a hospital security guard and an unknown number of Jefferson Hospital administrators, have all conspired in an unholy alliance to frame Mumia Abu-Jamal. So solid are all of these individuals in their conspiracy against Mr. Jamal, the unemployed cab driver from Philadelphia, that not one of them has betrayed the others in over 16 years. So rehearsed is each in their alleged frame up, that not one has ever fallen apart on the witness stand while being cross examined by several different attorneys at several different hearings, spanning a period of more than 16 years. **The defense' conspiracy theory seems to have no limits.** **However, once put in context it can be seen for the fraud that it really is.**

## ***CONSIDER THE FACTS THAT CONVICTED MUMIA ABU-JAMAL***

From the moment the shooting stopped on December 9, 1981 until today, Mr. Jamal's actions have been consistent with his guilt. He has done nothing that an innocent person would do if accused, then convicted of murder.

### **FACT**

Mr. Jamal had a long history of outspoken activism against the Philadelphia Police Department and police in general. Mr. Jamal is a man who has stated that he used his position in the Black Panthers to call for a "black revolution in America" and who stated "political power grows from the barrel of a gun." Is it a coincidence that he was found only 10 feet away from to the body

of a dead Police Officer with his gun, the murder weapon, lying next to him?

**FACT**

Five credible eyewitnesses testified in explicit detail that they saw Mumia Abu-Jamal run from the parking lot across the street and fire the final shot that killed Officer Faulkner. Several of these individuals stated that in some cases, from less than 30 feet away, they watched as Mr. Jamal repeatedly fired at the fallen officer from point blank range. One even stated that Jamal took the time to bend down and fire the final shot into the wounded and unarmed officer's face from less than a foot away.

**FACT**

Mr. Jamal was physically identified at the scene by many of the 5 eyewitnesses as the man who shot Officer Faulkner. None of these individuals knew each other, nor did they have time to review each others story, or be coerced by police prior to making their identifications. Each watched from a different vantage point at the scene and several stated that they never lost sight of Mr. Jamal from the moment the shooting stopped, until the police apprehended him and placed him in the van.

**FACT**

Mr. Jamal was apprehended only 10 feet away from Officer Faulkner's body.

In his chest, Jamal had a bullet fired from Officer Faulkner's gun. Certainly the officer would have shot at the person attacking him.

**FACT**

The gun found next to Mr. Jamal was owned by Jamal and registered in his name.

Mr. Jamal was found wearing an empty gun holster and his gun contained five spent unique high velocity Special P+ casings, the exact brand, caliber and type of ammunition retrieved from Officer Faulkner's brain.

**FACT**

Tests were entered into evidence showing that the bullets removed from Officer Faulkner's body were consistent with the same unique .38 caliber Federal Arms ammunition found in Jamal's gun. A storeowner testified that he sold Jamal his gun shortly before the killing. He produced a signed receipt with the guns serial number to verify his allegation.

**FACT**

The general rifling characteristics found on the bullet removed from Officer Faulkner's brain identically matched the general rifling characteristics found in the barrel of Jamal's gun.

**FACT**

Mr. Jamal's brother, William Cook, was found a few feet away from the shooting. It is believed that he witnessed the entire

incident. When police approached William Cook, he stated, "I ain't got nothing to do with this." Mr. Cook didn't say, my brother and I ain't got nothing to do with this, or someone shot the cop and ran away. He professed his innocence alone, not Mr. Jamal's.

**FACT**

The jury knew that William Cook was the closest person to the murder. Yet the jury never heard Mr. Cook testify in his brother's behalf. The fact that Mr. Cook would allow his brother to be sentenced to death, rather than testify to his innocence must have sent a strong message of guilt to the jury.

**FACT**

Three individuals testified that an angry, raging Jamal shouted "I shot the mother fucker and I hope he dies!" on two different occasions, just outside the emergency room entrance. A hospital report given by a hospital security guard to her supervisor the day of the shooting, was produced at trial in 1982. It verified that Priscilla Durham, the hospital security guard who stated under oath that she had no idea who Jamal was at the time, reported Jamal's outbursts to her supervisor in writing within hours of their utterance.

**FACT**

On June 21, 1982, Officer Faulkner's bloody shirt was displayed in the courtroom.

Mr. Jamal was seen by several individuals to turn and smile at Officer Faulkner's widow as her husband's blood stained shirt was displayed in the courtroom. This is hardly the action of an innocent man.

**FACT**

Throughout the trial and at the sentencing hearing, the jury saw the allegedly docile

Mr. Jamal explode with loud outbursts, obscenities, verbal threats and attacks, on the judge and on his own co-counsel. The jury witnessed this on a daily basis.

**FACT**

The jury also heard Jamal demand to have John Africa, the leader of a violent secessionist group called MOVE, sit at his side as co-counsel. They heard Mr. Jamal tout his support for MOVE, as well as the fact that he was defending himself according to the directives of John Africa.

**FACT**

Finally, at his sentencing hearing, Mumia Abu Jamal threatened the life of Judge Albert Sabo in front of the entire courtroom. Mr. Jamal had this to say to the Judge at that hearing:

"I'm going to tell you one thing: You have sentenced yourself, just like Judge Malmed, just like Malcolm, just like Merna Marshal, and every other Judge who dares to sit up there and act like you got

some justice. You are wrong. You have just been sentenced to death. You have just been convicted!" (T.R. 5-25-83 165)

**"Justice cannot be achieved until those who are not injured by crime feel as indignant as those who are."**

King Solomon

## ***OFFICER FAULKNER'S WIDOW ATTACKED***

Maureen Faulkner, Officer Daniel Faulkner's widow, has spent years attempting to publicly counter the misinformation disseminated by Jamal's attorneys and supporters. Mrs. Faulkner's actions are helping individuals interested in her husband's case to see through the misrepresentations, distortions and lies produced and disseminated by Leonard Weinglass, Mr. Jamal's current attorney. To counter her efforts, Mr. Weinglass and groups supporting Mr. Jamal launched a smear campaign, which was intended to cast doubt on Mrs. Faulkner's credibility. Mr. Weinglass and his friends have seized upon a statement made by Mrs. Faulkner in a 1995 newspaper interview, and tried to use it to discredit her. At that time, Mrs. Faulkner commented to a reporter from the Washington Post, that Mumia Abu-Jamal had turned and smirked at her when her husband's blood-stained shirt was displayed in open court during the 1982 trial. Several groups supporting Mr. Jamal have published articles arguing that Mrs. Faulkner's statement is a lie. To support their point, they look to Mr. Weinglass to supply them with facts from the court record. [\(TOUCH HERE TO VIEW REFUSE AND RESIST'S PIECE "Philly Cops Lie Once Again"\)](#)

We asked Mrs. Faulkner about her 1995 statement. She told us that she stands by it, because it is true. Her position creates an interesting situation: either Mrs. Faulkner or Mr. Weinglass is lying. As with all pronouncements made by Leonard Weinglass, which he purports to back up with "fact", we felt it important to

review his allegation in the trial record. We were not surprised by what we found.

#### THE BACKGROUND REGARDING THIS SITUATION

When printing propaganda attacking Mrs. Faulkner, the various groups supporting Mr. Jamal have used information supplied by Mr. Weinglass to support their position. Based on this information, they state that Officer Faulkner's shirt was displayed in the courtroom on June 26, 1982 and that it was not displayed again in the courtroom on any other day. As usual, Weinglass supplies Jamal's supporters with an incomplete and twisted version of the real facts.

While researching this situation, we discovered that Mr. Weinglass had recently written a letter to the General Manager of the ABC-TV affiliate in San Francisco, chastising them for producing and airing a 12 minute Special Report about the support Mumia Abu-Jamal has received in the Bay Area. This letter has been reproduced in it's entirety on a web site managed by a group supporting Mr. Jamal called "Refuse and Resist." In his letter, Mr. Weinglass has placed in writing his accusation against Mrs. Faulkner.

In his letter to KGO-TV, Mr. Weinglass states, "It would have been helpful if KGO had asked Mrs. Faulkner about a claim she makes that when a ballistics expert held up her dead husband's bloody shirt in the courtroom to display the bullet holes, Jamal turned and smiled at her. This is a real crowd stopper. It seems to capture the very essence of the prosecution's claim that Jamal was a cold-blooded killer. The only problem is, it's not true. A simple examination of the transcript shows that on the day the ballistics expert presented his testimony, [June 26, 1982] Jamal was absent from the courtroom." Mr. Weinglass goes on to say, "In the court of law, the prosecution has had Judge Sabo to protect them. But in the court of public opinion, Mrs. Faulkner has no such protection. Her erroneous statements were quickly exposed."

#### THE REAL FACTS ABOUT THE BLOODY SHIRT

Mr. Weinglass is correct about one thing regarding this matter. "A quick review of the transcripts" does reveal that on one of the days that the blood stained shirt was displayed, [6-26-82] it appears that Jamal may have been absent from the courtroom. **However, a more detailed review of the transcripts reveals that Mrs. Faulkner is telling the truth and that Weinglass again misrepresents the facts to suit his underhanded tactics. A detailed review of the court record reveals that Officer Faulkner's blood stained shirt was displayed in the courtroom on two different days.**

As Mr. Weinglass states, the shirt was displayed on June 26, 1982. However, the court record clearly shows that the shirt had

previously been displayed in open court on June 21, 1982. Leonard Weinglass, a man paid well to have an implicit knowledge of the court record, has either missed this important fact, or has deliberately chosen to disregard it in order to attack Officer Faulkner's widow.

To verify this situation, we offer the following testimony directly from the trial record. On June 21, 1982 Officer John Heftner, the courts evidence handler, is asked:

Joe McGill: "Would you look at C-27?"

Heftner: "Yes"

McGill: "Can you identify it?"

Heftner: "It's Officer Faulkner's shirt."

(6-21-82, T.R. 4.10)

This verifies that the shirt was displayed in the courtroom on June 21, 1982.

A few moments later, Officer Heftner is asked to display Mr. Jamal's gun. Prosecutor McGill asks:

"Is there a name indicated on the record as to the purchaser [of that gun]?"

Heftner: "Yes, there is."

McGill: "And what is his name?"

Heftner: "Mumia Abu-Jamal."

McGill: "Would that be Mumia Abu-Jamal?"

Heftner: "That is correct."

McGill: "Is that individual in the courtroom today?"

Heftner: "Yes, sir, he is."

McGill: "Would you point him out?"

Heftner: "Right there, sir."

(6-21-82, T.R. 4.35)

This testimony verifies beyond any doubt, that Jamal was in the courtroom when the blood stained shirt of his victim was displayed.

A final bit of documentation further illuminates the truth on this matter. On June 22, 1982, the day after Officer Faulkner's shirt was displayed, The Philadelphia Inquirer published an article stating the following, "**Earlier in the day [6-21-82] Maureen Faulkner, the officer's widow, left the courtroom crying after her husband's bloody shirt was admitted as evidence.**"

Mrs. Faulkner provided us with an original copy of this article. She stated that on June 21, 1982, she had to be escorted from the courtroom because she began to hyperventilate when Mumia Abu-Jamal turned and smiled at her after her husband's blood-stained shirt was displayed. She was taken to Jefferson Hospital, the same hospital her murdered husband had been taken to. She was treated and released the same day.

CONCLUSION REGARDING THE "BLOODY SHIRT"

Inside the courtroom, Mr. Weinglass must act as an attorney, bound by a loose code of conduct. Outside the courtroom however, he has again proven himself to be an adept propagandist, a public relations man of the highest order. Should anyone dare speak the truth about this case, they are dealt with in the same manner as Mrs. Faulkner. Threatening letters are sent, rife with self-serving misrepresentations of the case facts, and Jamal's supporters blitz the Internet with their new misinformation. With their personal attack on Officer Faulkner's widow, Mr. Weinglass and his cohorts have again shown us that there is no limit to the depths he will sink to paint Mumia Abu- Jamal as the victim in this case.

## **QUESTIONS OR COMMENTS**

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# TRANSCRIPT FROM 20/20, DECEMBER 9, 1998

Note: This transcript has been altered to delete material not pertinent to the Mumia Abu-Jamal story.

**December 9, 1998**  
**ABC Transcript # 1879**

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## WEDNESDAY

DIANE  
SAWYER.....Host

SAM  
DONALDSON.....Host

### **Hollywood's Unlikely Hero**

HARRY  
PHILLIPS.....Producer

SAM  
DONALDSON.....Correspondent

*This document may contain phonetic spellings; accuracy is not guaranteed.*

### **20/20 Wednesday**

### **December 9, 1998 ABC Transcript #1879**

**ANNOUNCER:** From ABC News, around the world and into your home, the stories that touch your life, this is 20/20 Wednesday -- with Barbara Walters, Diane Sawyer, Sam Donaldson, Connie Chung, Charles Gibson and Hugh Downs.

Tonight -- he's on death row for murder, but Hollywood celebrities and world leaders say he shouldn't die.

**JOSEPH MCGILL, Prosecutor:** People are making something of a hero of somebody who runs over and shoots a cop in the back.

**ANNOUNCER:** Rallies take place around the world for a man convicted of killing a police officer, and the officer's partner says the convict even confessed to the crime.

**GARRY BELL, Police Officer:** He just shouted out that "I shot the MFer. I hope he dies."

**ANNOUNCER:** So why have some of the most recognized names in entertainment and politics taken up his cause?

**MAUREEN FAULKER, Victim's Wife:** Mumia is nothing but a cold-blooded murderer. And they have been duped.

**ANNOUNCER:** And why is the slain cop's widow still haunted by the voice of her husband's killer?

**MUMIA ABU-JAMAL:** From death row, this is Mumia Abu-Jamal.

**ANNOUNCER:** Tonight, Sam Donaldson returns to the scene of the crime and examines the evidence. Is this man a cold blooded killer or America's last political prisoner? The compelling story of "Hollywood's Unlikely Hero."

### **Hollywood's Unlikely Hero**

**ANNOUNCER:** From ABC News in New York, Diane Sawyer and Sam Donaldson.

**DIANE SAWYER, ABC News:** Hello, and welcome to 20/20 Wednesday. We begin tonight with the story of a man who is sitting on death row for the murder of a police officer on this day in 1981. But what is it about this case? He has generated international fervor, support from all kinds of celebrities and politicians. Do they know the whole story? Are they in for a surprise?

**SAM DONALDSON, ABC News:** Well, Diane, they could be because passions have run high on all sides of this case almost from the moment a rising young black journalist named Mumia Abu-Jamal was arrested on the scene of a vicious murder.

With time finally running out for Jamal, the struggle by his supporters to save him from execution has reached a critical stage. 20/20 investigated the facts and the passions to see why this case has generated such worldwide interest.

**MUMIA ABU-JAMAL:** Welcome to hell. A hell erected and maintained by human governments and blessed by black-robed judges.

**SAM DONALDSON (voice-over):** He is known as the "voice of the voiceless" -- writer, radio journalist, social commentator. And the state of Pennsylvania wants him dead.

**MUMIA ABU-JAMAL:** From death row, this is Mumia Abu-Jamal.

**MUMIA SUPPORTERS:** Mumia! Mumia! Mumia!

**MUMIA ABU-JAMAL:** I'm fighting every day, not just for my freedom, not just for my liberation, but for all of our liberation.

**SAM DONALDSON (voice-over):** His message, sold in videos like this one, in CDs and in books, inspires fund raisers, demonstrations and marches from Philadelphia to San Francisco and around the world. His campaign is endorsed by a who's who of the celebrity left -- from Woody Harrelson to Ed Asner. The city of San Francisco proclaimed a day in his honor. Venice, Italy, awarded him the key to the city.

**MUMIA SUPPORTERS:** Free Mumia! Free Mumia!

**SAM DONALDSON (voice-over):** His supporters are a kind of radical left for the '90s -- campus rebels, African-American activists, social leftists and opponents of the death penalty. They see the establishment as warped, and the establishment returns the feeling.

**JOSEPH MCGILL, Prosecutor:** People are making something of a hero of somebody who runs over and shoots a cop in the back.

**ED RENDELL, Mayor of Philadelphia:** And then, going up to the officer lying defenseless and prone, putting a gun 18 inches from his head and blowing him away.

**SAM DONALDSON (voice-over):** To understand the passion that now surrounds this man, you have to go way back to the beginning.

**(on camera)** It began here on Locust Street in downtown Philadelphia on a cold December night 17 years ago.

Officers responding to a call for backup found a squad car, its lights still flashing, behind a blue Volkswagen parked right here.

And on the sidewalk, they found one of their own lying face up in a pool of blood. Officer Daniel Faulkner was dead, shot once in the back and then right between the eyes. And a few feet away, sitting on the curb, they found Mumia Abu-Jamal beside his gun.

Witnesses said Officer Faulkner had been trying to arrest the driver of the blue Volkswagen, William Cook, who happens to be Jamal's brother. Three eyewitnesses -- one stopped in that intersection, one standing on a corner there and one sitting in a cab here right behind the squad car -- all say they saw Jamal run from across the street and shoot the officer in the back.

As the officer spun around, he grabbed his revolver and, as he fell to the sidewalk, fired a shot that wounded Jamal in the chest. It was then that Jamal, according to the witnesses, executed Officer Faulkner. The back-up officers arrived within 45 seconds, too late to save Officer Faulkner's life, but not too late to arrest Mumia Abu-Jamal.

**REPORTER:** The 27-year-old dreadlock radio newsman...

**SAM DONALDSON (voice-over):** Jamal was a teenage founder of the local chapter of the Black Panthers. While protesting at this 1968 George Wallace presidential rally, he claims he was beaten by police. By 1981, as a reporter of social issues, he was marked for success by a local magazine.

Now, suddenly, he found himself here, on trial for his life and facing a prosecutor armed with a spectacular array of evidence -- Joe McGill.

**JOSEPH MCGILL:** What you have is eyewitness testimony, not one but three. You have a weapon, clear. And later at a hospital, he blurts out what he did in an arrogant way.

**SAM DONALDSON (voice-over):** Yes, Jamal had even confessed at the hospital, according to the slain officer's partner, Garry Bell.

**GARRY BELL, Police Officer:** We made eye contact, and he just shouted out that, "I shot the Mfer. I hope he dies."

**SAM DONALDSON (voice-over):** In court, the confession played like a nail in Jamal's coffin. The jury quickly rendered a guilty verdict. And in spite of having no

prior criminal record, he was sentenced to death and has been on death row ever since.

Seen here two years ago in a sympathetic British documentary, he repeats the only thing he has ever said about the murder.

**MUMIA ABU-JAMAL:** I am absolutely innocent of the charge I was charged on.

**LEONARD WEINGLASS, Jamal's Attorney:** It is our contention he didn't shoot Officer Faulkner, and I think a reading of the evidence indicates that to be so.

**SAM DONALDSON (voice-over):** Leonard Weinglass has been Jamal's attorney since 1992. He's a veteran human rights advocate, dating back to the explosive Chicago Seven trial 30 years ago.

**LEONARD WEINGLASS:** Justice for Mumia Abu-Jamal.

**SAM DONALDSON (voice-over):** His passion for Jamal's case has caused many celebrities to accept his version of events.

**ED ASNER, Actor:** I just know that the trial stunk. And the police malfeasance is sufficient. Witness flip-flopping all over the place is sufficient.

**SAM DONALDSON (voice-over):** Ed Asner and Mike Farrell are just two of many Hollywood actors who believe the police, the prosecution and the judge, Albert Sabo, stacked the trial against Jamal.

**MIKE FARRELL, Actor:** The president of the criminal justice bar, for example, was quoted as saying, "When Judge Sabo walks into the courtroom, the Constitution dies a little."

**SAM DONALDSON (voice-over):** But at this trial, judicial decorum also died, thanks to the defendant. Just listen to how one trial reporter described it.

**(on camera)** "For four angry weeks, Abu-Jamal disrupted the courtroom, humiliated his own chosen attorney, insulted the jury and threatened the judge with violence." Is that a fair characterization of what happened?

**LEONARD WEINGLASS:** That isn't the way the trial began.

**SAM DONALDSON (voice-over):** Weinglass says Jamal was provoked by the court's refusal to grant him access to

witnesses and evidence and for removing him during jury selection.

**LEONARD WEINGLASS:** And at that point, he did the right thing -- he spoke on his own behalf. It was the judge who silenced him and, I believe, silenced him wrongfully.

**SAM DONALDSON (voice-over):** Weinglass contends the prosecution case was full of holes. He disputes the ballistics testimony. He disputes the confession. He disputes the eyewitnesses.

**LEONARD WEINGLASS:** I don't think, as we close out the 1990s, that we can execute a man of international renown on the basis of this record.

**SAM DONALDSON (voice-over):** So, over the years, support for Jamal has increased, even as successive court rulings have repeatedly confirmed his guilt.

**MUMIA ABU-JAMAL:** The campaign is building. It's growing by leaps and bounds in Europe.

**Prof. CLAUDE PUJOL (ph), Jamal Supporter:** When his book was translated into French 18 months ago, it went three times out of print, OK? Which was so unexpected.

**SAM DONALDSON (voice-over):** Like French professor Claude Pujol, Jamal's followers come to Philadelphia convinced of his innocence and taken by his charisma.

**CLAUDE PUJOL:** I feel so little compared to him.

**SAM DONALDSON (voice-over):** Still, a policeman was shot to death on this street back in 1981. And if Mumia Abu-Jamal didn't do it, is there an alternate version of what happened? Leonard Weinglass has one.

**LEONARD WEINGLASS:** Mumia ran to a scene where his brother was being beaten. That is true. As he got there, gunfire erupted. That is also true. But it was Mumia who was shot. Then the officer was shot, it is our contention, and the person who shot the officer fled the scene, as reported to the police that night.

**MAUREEN FAULKNER, Victim's Wife:** Leonard Weinglass is a liar.

**SAM DONALDSON (voice-over):** Maureen Faulkner is the slain officer's widow.

**(on camera)** Have you looked over the evidence that Leonard Weinglass says would prove that Jamal was innocent?

**MARUEEN FAULKNER:** Yes, I have.

**SAM DONALDSON:** There's no substance to it?

**MAUREEN FAULKNER:** No. He has duped the world into believing that this man is a political prisoner and is innocent of the crime charged, when that is not the case.

**SAM DONALDSON:** Strong words, but which side does the evidence really support? When we come back, the results of our 20/20 investigation into what actually happened the night Officer Faulkner was murdered.

**ANNOUNCER:** Could a police officer forget a murder confession? Could a coroner mistake a .38 caliber bullet? Could an innocent man be doing time on death row? Sam Donaldson goes to the heart of the evidence, when 20/20 Wednesday continues.

(Commercial Break)

**SAM DONALDSON:** From the moment word got out that 20/20 was investigating the case of Mumia Abu-Jamal, we began to hear from his supporters. Hundreds have contacted us. Some protested his innocence. Some simply urged us to be fair. A few threatened us. But all clearly thought they knew the facts. But do they? We conducted a four-month investigation, and here is what we found.

**(voice-over)** On a cold December day in 1981, Maureen Faulkner buried her husband, Officer Daniel Faulkner. But for 17 years, there has been no closure because of the voice that won't go away.

**MAUREEN FAULKNER:** I was driving to work one day, and all of a sudden, I heard this voice, this haunting voice.

**MUMIA ABU-JAMAL:** Promise death. The...

**MAUREEN FAULKNER:** And I could not believe that it was Jamal on the radio, doing this commentary. I began to shake because I was so upset.

**SAM DONALDSON (voice-over):** Since that day a few years ago, Maureen Faulkner has waged a crusade against the "free Mumia" campaign. She has written a 100-page document attempting to debunk their claims.

20/20 has looked at the arguments both she and the free Mumia movement make on the key points. First, ballistics. Jamal's supporters say the bullet that killed Officer Faulkner was .44-caliber, not a .38, like the gun found at the scene.

**CLAUDE PUJOL:** The bullet is not the size of the gun, first thing. They never did any tests.

**ED ASNER:** The fact that no ballistics tests were done, which is pretty stupid.

**SAM DONALDSON (voice-over):** But ballistics tests were done and proved the bullet was fired by a .38-caliber revolver. The claim that the bullet was a .44 rests solely on a hasty note scribbled by a pathologist at the autopsy. However, the pathologist later testified that he had no expertise in ballistics, that he had only been guessing. But Weinglass refuses to believe that.

**(on camera)** You don't think it was a guess?

**LEONARD WEINGLASS:** I don't think he would guess.

**SAM DONALDSON:** The police say that that slug has the lands and grooves consistent with being a .38 slug.

**LEONARD WEINGLASS:** It does.

**SAM DONALDSON:** But if it's a .38, then your contention that it was a .44 is wrong.

**LEONARD WEINGLASS:** Well, I think that issue is very much something that should be played out in front of a jury.

**SAM DONALDSON (voice-over):** But it had already been played out in front of a judge, when, three years ago, Weinglass's own ballistics expert testified the fatal bullet was a .38. Weinglass challenges the report of Jamal's hospital confession.

**LEONARD WEINGLASS:** And that testimony was produced by the officer's partner, plus a security guard who wanted to be a police officer. More than two months later, they remembered that Mumia said that.

**SAM DONALDSON (voice-over):** It is a fact that the confession surfaced only after two months. And that one officer present originally reported, "The Negro male made no comments."

But hospital security guard Priscilla Durham (ph) told the jury she reported it to her supervisor the next day. And another security guard, James Legrand (ph), says he, too, heard the confession. The slain officer's partner, Garry Bell, says the shock of the shooting suppressed his memory.

**GARRY BELL:** I've searched my soul. I've beaten myself up wondering how I could not have gone at a sooner date, immediately even, and report what I had heard.

**SAM DONALDSON (voice-over):** Finally, if there was a plot to fabricate a confession, then it had to include at least the eight people involved in reporting and investigating it, an idea rejected by two separate appeals courts in the last three years.

Then there are the defense eyewitnesses. Leonard Weinglass says four people saw the real killer running from the scene. But his number-one witness, William Singletary (ph), waited more than a decade before testifying to a story so bizarre even Weinglass has trouble defending it.

**(on camera)** He said the shooter emerged from the Volkswagen, yelling and screaming, shot Officer Faulkner in the head and ran away. Whereupon, according to Singletary, Abu-Jamal approached the scene and said, "Oh, my God, we don't need this," bent over Faulkner, who'd been shot between the eyes, and asked, "Is there anything I can do to help you?"

Whereupon, according to Singletary, Faulkner's gun, which was in Faulkner's lap, miraculously discharged, hitting Jamal in the chest. Now, that's incredible.

**LEONARD WEINGLASS:** He might be wrong on some of his timing. There's no doubt about that.

**SAM DONALDSON:** Timing? He's telling a story here which, clearly from the forensic evidence, couldn't have happened.

**LEONARD WEINGLASS:** This is my point. The jury should have heard from Singletary.

**SAM DONALDSON (voice-over):** Witness number two was a cab driver parked here, in plain view of the murder.

**LEONARD WEINGLASS:** As the police arrive, he told one of the arriving officers -- I believe a captain, "The guy ran away." Those were his first words.

**SAM DONALDSON (voice-over):** But the report from which Weinglass quotes goes on to say the shooter "didn't get far, and then he fell." And Weinglass's third witness, high up in a hotel room one block away, actually insisted that police were already on the scene when she looked out her window. And...

**(on camera)** ...she did not testify that she saw someone running away, simply that she saw someone running.

**LEONARD WEINGLASS:** Yes, which was different slightly than the statement she gave the police.

**SAM DONALDSON (voice-over):** Defense eyewitness number four was a prostitute standing on this corner two blocks away, who, after 14 years' silence, claimed she saw two men jogging from the scene. She also admits to being, in drug lingo, "half a nickel bag high."

**(on camera)** Now, where was she?

**JOSEPH MCGILL:** She was very far. I mean, really, it's actually two streets. I'd say it's beyond a football field.

**SAM DONALDSON:** You mean she's as far away as our camera?

**JOSEPH MCGILL:** I can't even see the camera.

**SAM DONALDSON (voice-over):** In contrast, prosecutor Joe McGill's three key witnesses were all within 50 feet of the shooting, and they gave essentially the same statement to three different police officers within 30 minutes of the murder.

There is, however, one witness who was even closer, the driver of the Volkswagen, Jamal's brother, William Cook.

**JOSEPH MCGILL:** The only thing that Cook has ever said was, "I didn't have anything to do with it," period.

**SAM DONALDSON (on camera):** Didn't he say, "Well, my brother didn't do it either"?

**JOSEPH MCGILL:** No, didn't say, "My brother didn't do it. My brother had a problem. Someone else did it. Get those people down there. They did it." Nothing.

**SAM DONALDSON:** Why wouldn't he come forward and say, "I can tell the truth now to help save my brother's life"?

**LEONARD WEINGLASS:** He did tell us that.

**SAM DONALDSON:** Well, where is he?

**LEONARD WEINGLASS:** And we subpoenaed him.

**SAM DONALDSON (voice-over):** Weinglass says Cook was afraid to come forward, because he was wanted by police on a minor theft charge. And now, says Weinglass, William Cook is missing.

None of these holes in the defense scenario seems to bother Mumia Abu-Jamal's supporters. But Philadelphia mayor Ed Rendell says they should.

**ED RENDELL:** It's just plain sad how this has become a cause celebre around the world.

**SAM DONALDSON (on camera):** Look at this.

"Proclamation -- justice for Mumia Abu-Jamal day in San

Francisco," signed by Willie Brown, Jr., mayor of San Francisco.

**ED RENDELL:** Well, they gave him the half-truths, and Willie came up with this proclamation, where he made a mistake, clearly. Willie should have picked up the phone and called me.

**SAM DONALDSON (voice-over):** Mayor Brown declined our request for an interview. As for actors Ed Asner and Mike Farrell, while they question Jamal's guilt, they also admit to a larger purpose behind their interest in his case.

**(on camera)** What do you say to people who say, "Well, Ed Asner doesn't know anything about this case. He's just using his Hollywood notoriety to try to upset a verdict that has already been rendered"?

**ED ASNER:** Well, I begin by saying that I am anti-death penalty. I think it's a farce. I think the economic disadvantaged are always the ones to die from the death penalty.

**SAM DONALDSON:** Even if he were guilty of shooting Officer Faulkner and even if you thought that was the case, you would say...

**ED ASNER:** I would not want him to die.

**SAM DONALDSON:** You're up against a very impressive number of people.

**MAUREEN FAULKNER:** I know. I am. But I believe that I have the truth on my side. Mumia is nothing but a cold-blooded murderer, and they have been duped.

**MIKE FARRELL:** You know, Ms. Faulkner, bless her. I really wish for her peace at some point. And if, in fact, a new trial holds that Mumia Abu-Jamal committed this crime, I hope he is punished appropriately.

**PROTESTERS:** Mumia! Mumia!

**MUMIA ABU-JAMAL:** No matter what they do to me, they can't stop me. This revolution is my religion.

**SAM DONALDSON (voice-over):** To his most zealous disciples, Mumia Abu-Jamal is a prophet. To call him a murderer is sacrilege.

**MALE SINGER (singing):** How long shall they kill our prophets while we stand aside and look?

**MUMIA SUPPORTER:** People are not just going to sit back and let another Malcolm X be murdered, you know, another Martin Luther King. Just like Jesus Christ, they were all freedom fighters, and they were all killed by this government.

**MALE SINGER (singing):** Won't you help to sing...

**SAM DONALDSON (voice-over):** Might this be Mumia Abu-Jamal's song of freedom? Or is it, rather, a lesson in the power of propaganda?

**MAUREEN FAULKNER:** Tell a lie, tell it big enough, tell it often enough, and it becomes truth. And that's just what happened in this case.

**PROTESTERS:** Mumia! Mumia!

**SAM DONALDSON:** We wanted to interview Jamal on camera but were denied access by the Pennsylvania Department of Corrections. Jamal's attorney is appealing that denial in court. And if access is granted, Jamal says he will do the interview, but only after ABC's current labor dispute is settled.

In the meantime, for Mumia Abu-Jamal, there is still a potential for Supreme Court review, and it is impossible to say when his death sentence might be carried out. As for Maureen Faulkner, she says she's been harassed by Jamal's supporters. She fears for her life and has relocated far from Philadelphia.

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