



# The Jamal Journal

**Published by the uncompromising International  
Concerned Family and Friends of Mumia Abu-Jamal**

## To DA Larry Krasner: Stop Defending the Unjust Conviction of Mumia Abu-Jamal

Online petition written by the uncompromising International  
Concerned Family & Friends of Mumia Abu-Jamal

Dear Philadelphia District Attorney Larry Krasner,

We, the signers of this petition, declare:

Mumia Abu-Jamal's 1982 conviction is a travesty of justice obtained through a combination of police, prosecutorial, and judicial misconduct, as documented by Amnesty International. Abu-Jamal has suffered from extreme injustice at all levels of the criminal justice system. These numerous improprieties have tainted Abu-Jamal's conviction beyond repair.

Mumia Abu-Jamal is currently represented by the NAACP Legal Defense Fund. We the petitioners are not his lawyers and do not speak for them. Instead, we are the grassroots movement of people united by the fact that we care about the fate of Mumia Abu-Jamal.

We are outraged by the many different ways that racism and institutionalized white supremacy have irreparably harmed Mumia Abu-Jamal's civil and human rights, and his rights to the fair adjudication of his case. The District Attorney's continued defense of the 1982 conviction & subsequent appeals process only affirms the longstanding racial injustice that has marred this case.

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PHOTO: Longtime ICFFMAJ supporter, Linda Ragin, raises her fist at a street press conference in West Philadelphia on Dec. 9, 2020, marking 39 years since Mumia's 1981 arrest, and the release of Mumia's twelfth book *Murder Incorporated, Book 3: Perfecting Tyranny*. Photo by Jamal Journal staff photographer Joe Piette.

## Pam's Message to the Movement: People Power Will Free Mumia Abu-Jamal! Please Sign Our Petition to DA Krasner!

Written by Pam Africa, coordinator of the uncompromising  
International Concerned Family and Friends of Mumia Abu-Jamal

Welcome to our first issue of the newly restarted Jamal Journal. We last published the Jamal Journal in the mid-1990s, and today we are excited to launch our newspaper and website at this absolutely critical time.

Mumia's health has improved somewhat since he nearly died from a diabetic coma that was induced by untreated Hepatitis C. After we won a lawsuit against the prison authorities, Mumia finally received treatment and fully recovered from Hepatitis C.

Unfortunately, the Hepatitis C also gave Mumia cirrhosis of the liver, and this is a very serious health problem that is made even worse by the conditions of his imprisonment. Just this month, Mumia reports that the severe itching, a symptom experienced previously, is returning and he does not know why.

Mumia is 66 and it has now been 39 years since his arrest on December 9, 1981. This is an urgent situation, folks, and we need your help.

### The Petition to DA Krasner

The Jamal Journal's lead story is our petition to Philadelphia District Attorney Larry Krasner, demanding that he stop defending Mumia's conviction and that he secure Mumia's release as quickly as he possibly can.

Before he became District Attorney, he was known for defending protesters that had been arrested by police, and he now describes himself as a "progressive" prosecutor that is bringing principles of social justice into the District Attorney's office. He has implemented some positive reforms confronting police corruption, and he has helped to exonerate over a dozen people. We support that.

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## Colin Kaepernick Declares His Support for Mumia

This statement from activist football player Colin Kaepernick was released on Nov. 16, 2020.

When I was invited to speak on behalf of Mumia, one of the first things that came to mind was how long he's been in prison. How many years of his life had been stolen away from him, his community, and his loved ones. He's been incarcerated for 38 years. Mumia has been in prison longer than I've been alive.

When I first spoke with Mumia on the phone, I did very little talking. I just lis-

tened. Hearing him speak was a reminder of why we must continue to fight. Earlier this year, The United Nations Human Rights Office of the High Commissioner issued a statement, noting that prolonged solitary confinement, the precise type often used in the United States, amounts to psychological torture. Mumia Abu-Jamal has spent roughly 30 of his 38 years in solitary confinement.

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## Before Her Death, Mumia's Sister, Lydia Barashango Said That She and Her Family Suspected Kenneth Freeman Was the Actual Shooter of Police Officer Daniel Faulkner

The Jamal Journal interviews Professor Johanna Fernandez, co-director of Justice on Trial (2009), and founder of the Campaign To Bring Mumia Home

**Jamal Journal:** *How did you become interested in Mumia Abu-Jamal's case and ultimately decide to co-direct your 2009 film Justice on Trial?*

**Johanna Fernandez:** Although I was not a filmmaker, a moment in the classroom inspired the project. In 2005, I'd started visiting Mumia on death row at SCI Greene in Western Pennsylvania's Supermax prison, an hour away from Pittsburgh. I was teaching at Carnegie Mellon University, and I started visiting him on the suggestion of Professor Emeritus David Demarest.

In 2009, my work on the film Justice on Trial, accelerated. It was at Carnegie Mellon

in 2009 that Mumia first spoke live from Death Row to my civil rights movement seminar. Waiting for the call was a nail-biting experience. And this was Mumia's second attempt to call into a college classroom, ever. A few weeks earlier, the first scheduled conversation coincided with an unannounced shutdown of the prison's telephone system. But this time the call came through.

The students' exchange with Mumia was chilling. And his answer to the final question one of them posed hit us all in the gut. The students asked Mumia to reflect on the significance of his political impact from death

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# Welcome to the Jamal Journal!

We are excited to release the 1st issue of our newly restarted newspaper. *The Jamal Journal* was last published in the mid-1990s by the uncompromising International Concerned Family and Friends of Mumia Abu-Jamal (ICFFMAJ).

We are now fundraising for our 2nd issue, to publish it in time for Mumia Abu-Jamal's 67th birthday celebration on April 24, 2021.

The Jamal Journal is a sponsored project of Prison Radio and The Redwood Justice Fund, a 501(c)(3) corporation, so your donation is tax deductible to the full extent provided by law.

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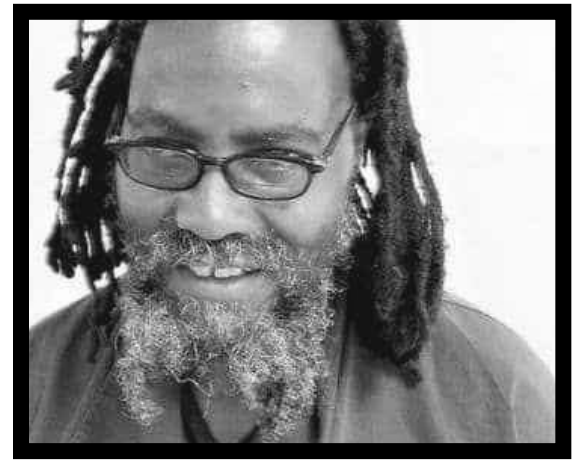
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## Frances Goldin (1924 - 2020):

### Housing Activist, Radical, and Literary Agent

Written by Mumia Abu-Jamal (May 19, 2020)

Who knows the name, "Frances Goldin?" The better question may be: "Who doesn't know her?". She had spent a long and colorful life on behalf of the poor and dispossessed, and almost began it as a politician, but luckily that was not to be. She ran for the New York State Senate in 1951 on the US Labor Party ticket.

And guess who led the slate? None other than W. E. B. DuBois. Labor didn't win, but that didn't stop her. Later in the 50s, she and several colleagues formed the Cooper Square Committee to fight on behalf of the residents of the Lower East Side. Fight against what? Perhaps New York's most famous city planner, Robert Moses, was trying to bulldoze the homes of some 2,400 poor tenants to make room for apartments for the middle class who could pay more money.

Frances, and other members of the committee, Thelma Burdick and Walter Thabit, fought long battles against the city and almost 50 years later, over 50 in fact, homes were open on the Lower East Side. Which I might add, reopened, and they maintained rent controlled apartments over this period. And they were sold to the tenants for several hundred dollars.

Several years ago, homes were opened there and the building was named after Frances Goldin. Frances, a radical, loved books. Especially radical books. In 1977, she took her love of books and operationalized it, founding and establishing the Francis Goldin Literary Agency: a home for radical books and their writers. For a woman who wanted to change the world, she opened up the door to books that could change people's minds: fiction, nonfiction, poetry, even children's books.

So book by book, author by author, she built the agency that continues to thrive to this very day. Her clients became her friends, which reminds me of this. Several years ago, CSPAN2, also known as Book TV, aired a book party for the launch of a novel by Barbara Kingsolver entitled the "Poisonwood Bible." The reception was filled to the brim with women who loved her work and loved her. When there was a question and answer session from the audience of her readers, I was struck by the tone. It could have been a church, for the vibe was reverential. I remember seeing Frances on the front row beaming like a cherub as her friend answered questions.

Another Frances memory. It was, I think, the middle to late first decade of the 2000s. I was on death row. When I heard a rap on the glass of the cell door, I looked up and there she was-- on the block of death row. I was flabbergasted. I was dumbfounded. I was



stupefied. For such a thing never happened before. But Frances Goldin made things happen. Francis, being Francis, went around the block, talking to the men on death row, other guys.

Then she went out to the so-called yard. A few minutes later, she returned to my cell door, tears streaming from her eyes. Before I could ask a stupid question, she blurted out, "Those... those... cages, they're not fit for dogs." I wanted to hold her, console her, to stop her sobbing. But the door between us prevented it. I felt oddly embarrassed. Like a poor man when others see his shack, his poverty.

Those cages, about 60 square feet, of chain link fencing, never looked the same again. For before it was but a place to play handball, to do pushups, to run and recreate. Frances' tears stained the memory.

Frances was more than a radical, or successful literary agent or even a ferocious housing activist. There are two daughters, Sally and Reeni. She was a mom, and her love and pride for that was something fierce. Born in 1924 to Russian Jewish refugees, she often bragged playfully of her Russian peasant genes. She grew up in Queens and New York's Harlem, and tasted antisemitism as stones and bricks thrown at her family's windows in Queens. She was both daughter and mother of the movement.

I dare say she was a woman of color, as only Frances could be. The color? Purple of course. Her eyes, a brilliant violet, reflected her spirit, intelligence, humor, her passions and her compassion. Those peasant genes carried her through 96 spring times. And the little woman taught generations the power of a big and mighty heart to transform the world around us.

From Imprisoned Nation, this is her friend and her client, Mumia Abu-Jamal.

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# Mumia Abu-Jamal: The Voice of the Voiceless

Written by The Campaign to Bring Mumia Home ([www.BringMumiaHome.com](http://www.BringMumiaHome.com))

## Who is Mumia?

Mumia is a revolutionary journalist. He has been writing since age 15, first as Minister of Information for the Philadelphia chapter of the Black Panther Party (1969-1971), then for numerous Philadelphia radio and print venues, including National Public Radio.

His journalism was featured in mainstream venues, but he refused to forget those whom corporate media routinely neglect. He was especially noted for covering police harassment of the MOVE organization, while other journalists ignored it.

His writings, today, after 39 years in prison, now fill twelve books and thousands of radio and print columns in publications ranging from homeless "street news" papers to Forbes magazine and the Yale Law Review.

## Mumia Served Nearly 30 Yrs. on Death Row

Mumia was confined for three decades on Pennsylvania's death row before federal courts ruled "unconstitutional" the death sentence he received at age 27 for the shooting death of Philadelphia police officer, Daniel Faulkner. He now is serving a "Life Without Parole" sentence in Pennsylvania's general prison population.

## Mumia is The United States' Most Internationally Renowned Political Prisoner

Mumia is known worldwide as a political prisoner, because of the political context of his arrest, sentencing and imprisonment.

He was arrested, tried, convicted and sentenced in the era of rampant police brutality, and also of activists' resistance, under former Philadelphia Mayor Frank Rizzo.

In that period, Mumia uncompromisingly reported on police brutality and racism, exposing officials' brutal assaults on the MOVE family & organization, and on other national and international revolutionary movements.

When he was found already shot at the scene of Officer Faulkner's shooting, police brutally beat Mumia beyond recognition, then charged him with the officer's shooting. He has been imprisoned ever since, on the basis of a trial that systematically denied him due process, involving prosecutors' withholding of evidence, racial bias in juror selection, and a judge's rampant bias.

Further, higher courts have routinely rejected Mumia's numerous appeals on the basis of exceptional rulings that denied him the courtesy of court



PHOTO: Ramona Africa and Julia Wright at Philadelphia City Hall protest (Nov. 2, 2002). Photo by AWOL Magazine / Philly IMC.

precedents that often were extended to others who lodged the same appeals on the same grounds.

## Mumia is a Framed Man

A charge of killing a police officer is the hardest rap to beat, even when innocent, especially for a revolutionary activist of color. Nevertheless, the arguments for Mumia's innocence are some of the strongest that can be made. He has maintained his innocence from the very beginning and to this day. Independent journalists researching his case have set forth cogent grounds that Abu-Jamal was framed (e.g. Patrick O'Connor, *The Framing of Mumia Abu-Jamal*, 2008).

Amnesty International, in its extensive analysis of the case in 2000, called for "a new trial," holding that the original trial "was irredeemably tainted by politics and race and failed to meet international fair trial standards."

Even a lawyer writing for the mainstream *American Lawyer* magazine, who was prone to call Mumia "guilty," nevertheless still summarized at length the evidence for a police frame-up, announcing, "I'm joining the 'Save Mumia' movement, here and now" (Stuart Taylor, Jr., *American Lawyer*, December 1, 1995).

## Mumia's case is a primer for what many others suffer

Mumia's case is a veritable primer on the kinds of abuse suffered by the black, brown and poor in the U.S. today. What happened to Mumia foregrounds starkly what many suffer in police encounters, in dealings with prosecutors, in trial and appellate courts, and in U.S. jails, prisons and detention centers. Consider these links, below, between Mumia's own experience and what is suffered by others in the U.S. today:

(1) Like so many others' bodies, Mumia's body was subjected to a brutal beating by police, on the street and in his ambulance on way to the hospital, before any determination of guilt was even attempted. He was black, brown, poor – therefore, vulnerable and beaten. Before that, he was subject to numerous cases of "stop and frisk" harassment.

(2) As seen by all too many of the poor, today, who stand before judges, the prosecutors suppress evidence that might work in favor of defendants.

In Mumia's case, the fact of a fourth person being at the crime scene, who was the likely perpetrator (Kenneth Freeman) was never considered by Mumia's jury. The prosecutor in Mumia's case acknowledged during another trial that this fourth person was present at the crime scene where Mumia was arrested and beaten.

Both police and prosecutors also suppressed an independent journalist's photographs of the crime scene. Taken by Pedro Polakoff, these were the first photos taken at the scene. They disprove key points in the state's case and raise numerous other questions undermining the coherence of prosecutors' case. These were never made available to the defense or jurors despite the photographer's offering them to both police and prosecutors.

(3) As experienced by many defendants of color, in Mumia's trial the D.A. used 10-11 of its 15 "peremptory challenges" to target black jurors for removal from potential service on Mumia's jury. This left Mumia, from a community that was overwhelmingly black, with a "jury of his peers" that was over 2/3 white.

Five years after Mumia's trial, a video training tape came to light detailing D.A. strategies to inten-



Feb. 6, 2012: Shortly after leaving death row, and then being permitted to have contact visits, Mumia embraces his wife, Wadiya Abu-Jamal.

tionally keep black jurors off juries when there are black defendants.

(4) Along with many others, Mumia has suffered harsh constraints of the Anti-Terrorism and Effective Death Penalty Act of 1996 that regulates the appeals process above the state level. This 1996 act, passed when some of Mumia's strongest challenges to Pennsylvania's courts were in process, limited federal powers of review over state court decisions. This effectively blocked Mumia's chances, and those of others, in their attempts to gain relief for even their strong claims. Many of the 198 currently on Pennsylvania's death row, and among the more than 3,000 on U.S. death rows, have been at the mercy of state courts ever since this 1996 Act.

But Mumia has suffered this limitation acutely in his state, having his appeals denied repeatedly while others' appeals have been granted for the same claims! A federal judge on the U.S. Third Circuit Court of Appeals himself noted this fact. The repeated practice of this denial to Mumia came to be called "the Mumia exception."

(5) Along with numerous others throughout Pennsylvania, Mumia faced a biased judge who had an unusually high number of his capital trial decisions reversed. That judge, Albert Sabo, also had been a member of a police union (the Fraternal Order of Police) and was heard in a court anteroom by a court stenographer to say of his work at Mumia's trial, "Yeah, and I'm gonna help 'em fry the n\_\_\_\_\_."

(6) Like all too many who go to trial without good defense counsel, Mumia was convicted in the absence of basic forensic evidence. The bullet that killed Officer Faulkner could not conclusively be matched to Abu-Jamal's gun. The police also failed to perform routine tests on Abu-Jamal's hands, which would have determined whether he had even shot a gun that night.

(7) Finally, and again like the experiences of many others in Philadelphia, Mumia's arrest and trial conviction were secured in an era when city police corruption was rampant. Less than two years before Mumia's trial, the Department of Justice, in an unprecedented move filed a lawsuit against the Mayor and 21 city and police officials for abuse that "shocks the conscience" (the lawsuit's words).

The officers who arrested and later brutalized Mumia came from the 6th District, which was under yet another federal investigation for police corruption, approved by the U.S. Attorney General under Ronald Reagan.

As a result, fully a third of the 35 officers involved in Mumia's case, including the top officer at the crime scene, Inspector Alfonzo Giordano, were subsequently convicted of corruption, extortion and tampering with evidence to obtain convictions.



# 'Bring Sundiata home': The case for freeing elderly political prisoners

At 84 years old, Sundiata Acoli has been in prison for 48 years, and has been denied parole six times. Last December, he was diagnosed with COVID-19. In this episode of Rattling the Bars, Rev. Lukata Mjumbe of the Sundiata Acoli Freedom Campaign joins Eddie Conway to discuss Acoli's life as an organizer, mathematician, artist, and poet; the push by his friends and family, along with faith leaders, to secure his release; and the challenges aging prisoners face to their health and well-being. This interview has been edited for length. Read/watch the full show at the Real News Network ([www.therealnews.com/rattling-the-bars](http://www.therealnews.com/rattling-the-bars))

**Eddie Conway:** *Thank you for joining me for this episode of Rattling the Bars. In past episodes, we have been focusing on the well-being of elderly prisoners in the prison industrial complex.*

*Since then, this pandemic, COVID-19 has hit, we have increased our coverage of the conditions inside in relationship to elderly prisoners. Obviously, they are more susceptible to catching COVID-19 than any other part of the population, they're in overcrowded conditions, and we think they need to have available if they want the vaccine, but I want to take a minute today just to focus on one elderly prisoner.*

*So joining me today to talk about Sundiata Acoli, is Reverend Lukata Mjumbe. Thanks for joining me, Reverend Lukata. Would you talk a little bit about Sundiata Acoli's situation? Who is he?*

**Rev. Lukata Mjumbe:** Thank you, Brother Conway. My name is the Reverend Lukata Mjumbe, and I'm a member of the Sundiata Acoli Freedom Campaign, and it's my privilege to be here with you today and to be connected with your listeners to talk about Sundiata Acoli.

Sundiata Acoli is an 84 year old father and grandfather. He was born in 1937 in Texas, and has been in prison since 1973. He dedicated his life as an activist, as an organizer connected with the civil rights and the Black Liberation Movement in the 1960s and 70s, and he committed himself to the struggle for freedom and justice, and has been locked in a prison cell since 1973.

I connected with Sundiata back when I was a college student working for Amnesty International USA, and I was looking at a list of men and women from the 1960s and 70s that had been incarcerated in relationship to their political activities and involvement in various political movements, and I connected with Sundiata back then.

I began writing to him as a young man in my early 20s, while he was in prison, and have been working since that time for his freedom. I never imagined that I would be almost 50 years old and still working for his freedom, but on January the 14th, Sundiata turned 84 years old in prison, and there is a growing movement of people across the State of New Jersey, across the country, that are calling for us to bring Sundiata home.

When I was in my 20s, I was an activist and an organizer myself. Today, I am a pastor. I'm the pastor of a Presbyterian church in Princeton, New Jersey, and I have joined together with other pastors, and imams, and rabbis, and faith leaders from around the state that have said almost 48 years is too long for Sundiata Acoli to have been in prison.

This octogenarian prisoner is in jeopardy right now. He was diagnosed with COVID-19 last year, and we prayed, and we prayed, and we prayed that his life would not be lost, and our prayers were answered. But now we know that he continues to be in jeopardy, not only because the institution where he is incarcerated right now is under a lockdown as a result of COVID-19, but because Sundiata, as an 84 year old man, has a number of other health conditions, which make him especially vulnerable.

So we're calling upon people around the country, around the state, to join with us in saying, "Bring

Sundiata home," and again, I thank you for giving me the opportunity just to talk with you just a little bit about Sundiata, about who he is, about who he's been, but as importantly, looking forward to whatever future that he has left, which we hope and pray will be outside of a prison cell.

**Eddie Conway:** *Can you tell me a little bit about his family? Obviously, he's been locked up for 48 years, that's a long time. How is this affecting them? Does he have support, and what's the situation with the family?*

**Rev. Lukata Mjumbe:** Oftentimes, when people have been in prison, even for a short period of time, they may have lost all contact with any other people, and that can be a very real contributing factor to difficulties in integrating back into communities outside of the prison facility.

Well, Sundiata has two daughters who love him, who have written letters on his behalf, who have written to the governor, who have made appeals to him. There's one daughter who lives in Texas, the other who is in New York, and they have said, "Look, we are ready to receive our father. We are ready to allow our father to have the rest of his life, not only with us, but also with his grandchildren, where he will have the opportunity to be loved and to be cared for. We have a place for him, there will be no problem," and Sundiata has an extended family, even beyond his daughters and his grandchildren.

He has a loving community of people that, as I mentioned before, have been working for decades to see his release and are looking forward to receiving him, and welcoming him, and caring for him, as he moves further into the twilight of his life.

**Eddie Conway:** *Yes, I have a personal story like that to share myself. I was writing the book, *The Greatest Threat*, a book about the Black Panther Party and COINTELPRO, and I sent it to him and he critiqued it, he offered a suggestion to improve it, additions to the edits, and the book turned out pretty well, so I was thankful to him for that.*

*You say you are working with a group of faith leaders to get some support for Acoli. What does that look like, and how can people help with that?*

**Rev. Lukata Mjumbe:** Well, it looks like what I would consider to be growth and expansion. Now what we're seeing is a growing group of people who you might not expect.

When we look at Sundiata, we see that he has had a perfect disciplinary record for 27 years without any infractions whatsoever. And so, now what we're finding are older people who may not know anything about in great detail, the history of our freedom movement. Now we're finding people who are coming out of faith communities, whether they be historic black churches, whether they be large churches or small churches, whether they be white churches, or brown churches, or urban churches, or suburban churches, whether they be rabbis, or imams.

So the ways that we can help are manifold. If you go to the hashtag #BringSundiataHome, you're going to find access to the Sundiata Acoli Freedom Campaign website, where you'll find information in terms of Sundiata's case, you'll find information

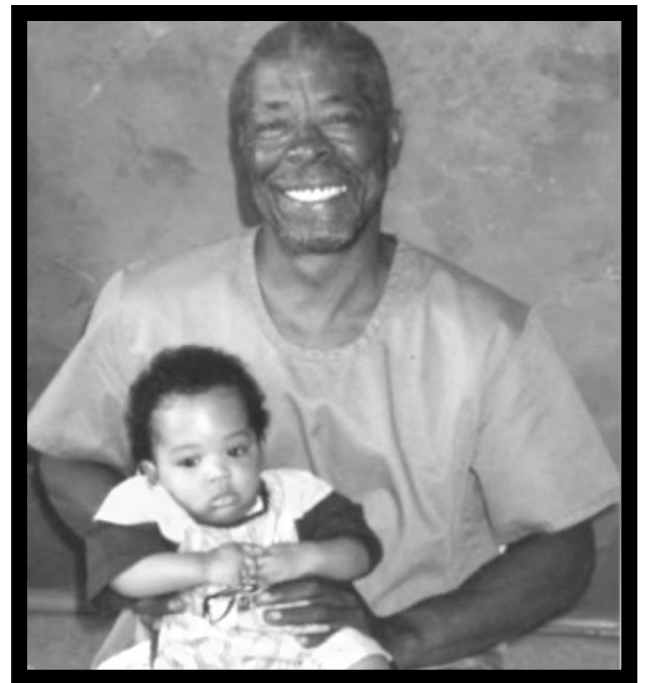


PHOTO: Sundiata Acoli with his grandchild.

about how you can write him directly at the federal correctional institution in Cumberland, Maryland.

You'll be able to write him, but then we also will be encouraging people to keep following this hashtag and to get more information, because there are some important struggles that are coming up this year, and we've committed to bring Sundiata home this year, and that's going to involve writing letters to Governor Phil Murphy, sending emails, making phone calls. There's a lot that we can do even while we're sheltered in place amidst COVID-19, and some of our senior citizens have found that they can be amazingly impactful activists and organizers from their living room or from their dining room table.

So we're going to ask people to write letters, to send emails, to make phone calls. We're going to ask people to make contributions where they're able, because we still have some legal expenses that are ahead of us this year, and appeals that we are filing.

Sundiata has come before the parole board and has been denied parole six times. And so, we don't have six more times, we don't have one more time. Sundiata, at 84 years of age, with serious health conditions beyond COVID-19, he has issues with his heart, he has intestinal issues. There are other presenting health issues that he has been struggling with, and that anyone would struggle with after they've been locked up in prison for almost 48 years in substandard conditions. This is the year that we have to bring Sundiata home.

**Eddie Conway:** *Do you have any final thoughts, something you want to share with the public?*

**Rev. Lukata Mjumbe:** Well, I just want to emphasize the urgency. I'm not arguing anymore about the particularities of Sundiata's case. I am a pastor, and I have prayed for everybody involved in this case. Sundiata has already served almost 48 years of prison, it will be 48 years in May. He has served what is almost what would be double a life sentence in the State of New Jersey.

We're calling for the compassionate release of an 84 year old man who has almost been in prison for 48 years, who was born in 1937, incarcerated in 1973, who is a grandfather, who is a father, who is sick and who needs to come home.

And so, if people can find it in their hearts to understand that there is no need, and there is no justice, and there is no rational, logical, principled, moral reason to keep Sundiata Acoli in prison,

—Eddie Conway is an Executive Producer of *The Real News Network*. He is the host of the TRNN show *Rattling the Bars*. A former member of the *Black Panther Party*, Eddie Conway was an internationally known political prisoner for over 43 yrs.



## Black Votes Matter Asks Nebraska Pardon Board to Release Former Black Panther Ed Poindexter

Written by Michael Richardson, author of the definitive book on the Omaha Two

The campaign to obtain freedom for former Black Panther leader Edward Poindexter is gaining growing support as evidenced by a new billboard near Interstate 480 in Omaha, Nebraska, calling for his freedom. Poindexter has been imprisoned since 1970 for the bombing murder of an Omaha policeman following a controversial trial marred by withheld evidence, apparent planted evidence, conflicting police testimony, questionable forensic evidence, and perjured testimony by the state's chief witness, Duane Peak, the confessed bomber.

Poindexter, sentenced to life at hard labor at the close of the April 1971 trial, has survived co-defendant David Rice (later Wopashitwe Mondo Eyen we Langa) who died at the maximum security Nebraska State Penitentiary in March 2016 while serving his life sentence. The two prisoners were leaders of a Black Panther Party affiliate chapter called the National Committee to Combat Fascism and targets of a clandestine counterintelligence operation code-named COINTELPRO conducted illegally by the Federal Bureau of Investigation.

Preston Love, Jr. is a member of the Freedom for Ed Committee that has held a prayer vigil, a march, and a demonstration outside the home of Governor Pete Ricketts. Love, who chairs the organization Black Votes Matter, is firmly convinced Poindexter was a victim of a wrongful conviction. Over the years, Freedom of Information lawsuits have slowly uncovered secret federal manipulation of the murder investigation and subsequent criminal trial. However, despite the revelations, Poindexter has not been granted a new trial.

Many, including a national justice group, have called Poindexter a political prisoner because of the COINTELPRO subterfuge and subsequent unfair courtroom injustice that has kept him imprisoned for

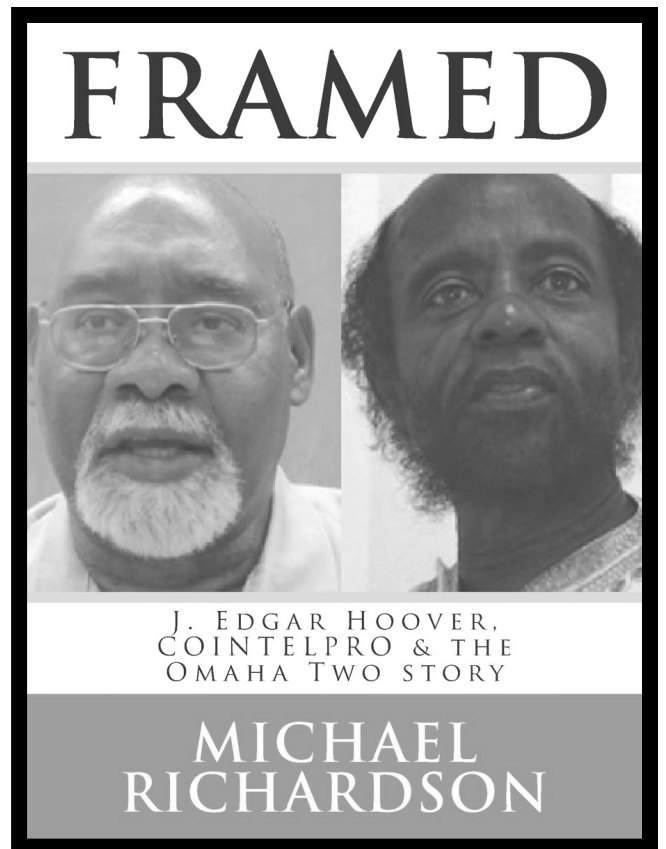
half a century. The funds for the billboard were provided in a grant from the Jericho Movement to Free All Political Prisoners. Jericho Boston helped defray the billboard costs.

Denied a new trial by the courts, Poindexter is getting similar treatment from the Nebraska Pardon Board, made up of the Governor, Attorney General, and Secretary of State. The three politicians control Poindexter's fate as they determine sentence commutations. Until the trio acts, the Nebraska Parole Board cannot take up Poindexter's case.

Not only has the Pardon Board thus far declined to consider Poindexter's request for a commutation of sentence, they insist he must continue to wait for a hearing. Despite Poindexter's age, 76, and ailing health, the Pardon Board refuses to hear his case while they work on pardons for persons no longer in jail.

In a stunning display of disregard for the numerous calls throughout the country to reduce prison populations as the Covid virus runs rampant behind bars, the Nebraska Parole Board refuses to consider commutation requests ahead of pardons for those who have already served their sentence. The board has approximately fifty pending commutation requests yet only hears a half-dozen cases every several months. Instead, the majority of cases that appear before the board are for pardons from ex-convicts who have already been released from the prison risk of infection. The board also refuses to triage the commutation requests to put elderly or at risk prisoners on an expedited schedule.

Ricketts and his two political colleagues have failed Good Government 101. The best place to start on any reduction of the number of confined inmates would be with those seeking commutation. Their cases are already prepared for consideration and



would be evaluated on a case-by-case basis.

Preston Love explains the reason for the billboard. "It is time for the public to realize that Ed Poindexter is real and is vulnerable to forces beyond his control, just like the rest of us. His humanness, his face, his life. We hope this billboard will close the gap for many to speak out for Ed and help get the State's knee off his throat, let him breathe"

*More information on Ed Poindexter is available in the book FRAMED: J. Edgar Hoover, COINTELPRO & the Omaha Two story, in print and ebook format. Portions of the book may also be read free online at NorthOmahaHistory.com. The book is also available to patrons of the Omaha Public Library.*

**Take Action to Free Ed Poindexter:**  
[www.freepoindexter.com](http://www.freepoindexter.com)

## Take Action To Free Elder PA Political Prisoner Russell 'Maroon' Shoatz! —November 23, 2020 letter from health experts demands Maroon's release

**Please call the Pennsylvania Governor at (717) 787-2500 to demand the release of Russell Shoatz and all elderly prisoners. Learn more about supporting Maroon: [www.russellmaroonshoatz.wordpress.com](http://www.russellmaroonshoatz.wordpress.com)**

*(Letter from health experts demands Russell 'Maroon' Shoatz's release, written Nov.23, 2020)*

To Governor Tom Wolf, Lieutenant Governor John Fetterman, and Attorney General Josh Shapiro:

Re: Russell Maroon Shoatz, AF3855 SCI Dallas

We are writing to urge you to release Russell Maroon Shoatz, #AF3855, currently incarcerated at SCI Dallas. As medical professionals familiar with the details of Mr. Shoatz's situation and health, we know that Mr. Shoatz is in imminent danger of death if he remains incarcerated.

After treatment for prostate cancer several years ago, Mr. Shoatz was diagnosed with Stage 4 rectal cancer in the spring of 2019 at age 75. The cancer was discovered when he had emergency surgery for a bowel obstruction. He received initial treatment at a hospital near Dallas SCI, where his family and friends were close enough to visit. Then he was transferred to Fayette in western, PA, where there is an on-site chemotherapy/oncology unit. Far away from family and friends, amid the COVID pandemic, he endured over 12 cycles of chemotherapy that completed in late July 2020. He suffered side effects of painful hand neuropathy, fatigue, low blood

counts, and weight loss.

In late October he consulted with a surgeon who said that it was time to remove the rectal primary tumor, since the chemotherapy had successfully eradicated the distant areas of metastases. The surgeon said surgery was planned within two weeks and it was critical it not be delayed. At this time Mr. Shoatz heard that there were 18 cases of COVID at Fayette. On November 13th, right before the surgery, after receiving the colon prep, he was tested COVID positive. Since then, suffering severe gastrointestinal distress, he was put into medical isolation—24-hr solitary confinement—in the infirmary.

At age 77, debilitated from cancer and chemotherapy, in grave danger from COVID-19 infection, Mr. Shoatz now faces life-threatening delays for the cancer surgery. We understand that there is currently a significant spike in COVID-19 cases throughout the Pennsylvania system, with resulting pressures on the prison health

facilities. Mr. Shoatz must be released immediately.

Sincerely,

Robert Cohen, MD, Physician, NYC Board of Correction Commissioner

David Hoos, MD, MPH, Project Director, Population-based HIV Impact Assessment Program, ICAP, Mailman School of Public Health Columbia University, Former Associate Medical Director, New York State Department of Health AIDS Institute

Robert Fullilove, Professor of Sociomedical Sciences at the Columbia University Medical Center; Associate Dean, Community and Minority Affairs

Barbara C. Zeller, MD, retired Chief Medical Officer, Brightpoint Health; Dingmans Ferry, PA



PHOTO: On Jan. 15, 2020, Pam Africa (front left) joins a Food Not Bombs giveaway in West Philly, dedicated to Russell 'Maroon' Shoatz. Photo by Joe Piette.

# New article will be featured here in the printed newspaper (stay tuned)

...Continued from page 1:  
**Colin Kaepernick Supports Mumia**

In his book *Live From Death Row*, Mumia wrote that prison is a second by second assault on the soul, a day-to-day degradation of the self, an oppressive steel and brick umbrella that transforms seconds into hours, and hours into days. He has had to endure this second-by-second assault on his soul for 38 years.

He had no record before he was arrested and framed for the death of a Philadelphia police officer. Since 1981, Mumia has maintained his innocence. His story has not changed. Mumia was shot, brutalized, arrested, and chained to a hospital bed. The first police officer assigned to him wrote in a report that the “Negro male made no comment” as cited in *Philly Mag*. Yet 64 days into the investigation, another officer testified that Mumia had confessed to the killing. Mumia’s story has not changed, but we’re talking about the same Philadelphia Police Department whose behavior “shocks the conscience,” according to a 1979 DOJ report. Behaviors like shooting nonviolent suspects, abusing handcuffed prisoners, and tampering with evidence.

It should therefore come as little surprise that, according to Dr. Johanna Fernandez, over one third of the 35 officers involved in Mumia’s case, were subsequently convicted of rank corruption, extortion, and tampering with evidence to obtain convictions in unrelated cases. This is the same Philadelphia Police Department where officers ran racial profiling sweeps, like Operation Cold Turkey in March, 1985, targeting Black and Brown folks; and bombed the MOVE house in May of that year, killing 11 people, including five children and destroying 61 homes.

The same Philadelphia police department, whose officers eight days before the 2020 presidential election, shot Walter Wallace Jr. dead in the streets in front of his crying mother. The Philadelphia Fraternal Order of Police has unrelentingly campaigned for Mumia’s execution. During their August, 1999, national meeting, a spokesperson for the organization stated that they will not rest until Abu-Jamal burns in hell. The former Philadelphia president of the Fraternal Order of Police, Richard Castello, went as far as to say that if you disagree with their views of Mumia, you can join him in the electric chair and that they will make it an electric couch.

The trial judge on Mumia’s case in 1981, Albert Sabo was a former member of the Fraternal Order of Police. Court reporter Terry Maurer Carter even heard Judge Sabo telling a colleague “I’m going to help them fry the nigger.”

Found in December, 2018, in an inaccessible storage room of the DA’s office, six boxes of documents for Mumia’s case reveal previously undisclosed and highly significant evidence showing that Mumia’s trial was tainted by a failure to disclose material evidence in violation of the United States and Pennsylvania Constitutions. In November, 2019, the Fraternal Order of Police filed a King’s Bench Petition asking the court to allow the state attorney general, not the Philadelphia DA’s office, to handle the upcoming appeals.

As the FOP president John McNesby said just last year, “Mumia should remain in prison for the rest of his life.” And a King’s Bench order provides the legal angle for the Commonwealth of Pennsylvania to uphold Judge Sabo’s original wish, which was for Mumia ultimately to die in prison.

Today we’re living through a moment where it’s acceptable to paint “end racism now” in front of the Philadelphia Police Department’s 26th district headquarters, and yet a political prisoner who has since the age of 14 dedicated his life to fighting against racism, continues to be caged and lives his life on a slow death row. We’re in the midst of a movement that says Black Lives Matter. And if that’s truly the case, then it means that Mumia’s life and legacy must matter. And the causes that he sacrifices life and freedom for must matter as well.

Through all of the torture Mumia has suffered over the past 38 years, his principles have never wavered. These principles have manifested themselves in his writing countless books while incarcerated, in his successful radio show, and the time and energy he has poured into his mentorship of younger incarcerated folks and the continued concern for the people suffering outside of the walls. Even while living in the hells of the prison system, Mumia still fights for our human rights. We must continue to fight for him and his human rights.

Well, Mumia is 66 years old. He is a grandfather. He is an elder with ailments. He is a human being that deserves to be free.



# The February 3, 2021 “Liberons Mumia” Protest at the Place de la Concorde in Paris, France Marks Over 25 Years of French Support

Written by the Claude Guillaumaud-Pujol and French Collectif “Liberons Mumia”

The French Collectif 'Liberons Mumia' has been organizing demonstrations for Mumia at the Place de la Concorde in Paris since the Summer of 1995.

They first took place in front of the American Embassy; then we were asked to move to the other side of Concorde, near the American Consulate and in front of the Jardin des Tuileries, which is an even better spot because we can hang our banners from the balustrade of the park which makes them visible from far away.

This has been the routine ever since the Summer of 1995, the year of the PCRA, every Wednesday night from 6 to 8 pm as long as Mumia was on death row. It has been our meeting point where we could give out leaflets to passers-by and tourists, converse with other Mumia supporters from Paris and suburban districts, especially the cities where Mumia is an honorary citizen like Saint-Denis, Bobigny or Villejuif. Sometimes officials from these different places come and join us; we can also meet students passing by, or radio journalists for an interview, like Nadine from France Culture (she visited Mumia five years ago) or from local Paris radio stations; at times celebrities stop on the way, like Jane Birkin's youngest daughter Lou Doillon, or American tourists – some just curious and wishing to learn about Mumia, some hostile and pro-death penalty. Linn Washington came once while teaching in London.

And of course, all French activists hope to see Mumia at Concorde in the near future!

For the past eight years, basically since Mumia's death sentence was commuted to life in prison, we no longer meet every Wednesday. We have switched to a monthly demonstration which takes place on the first Wednesday of each month, even if it happens to be the first of January as Jacky won't tolerate any exception!

If we had visited Mumia, along with the MOVE brothers and sisters before they were released - which a couple of us did twice a year before COVID, we would tell our comrades about the

visits and the messages Mumia entrusted us with at the following Concorde event. If Mumia says France is the country where he feels a citizen it is probably because so many French people have written to him for so many years, sending local postcards for his birthday and thus enabling him to quote almost every French province and its main town!

The Place de la Concorde, the place where we met again on February 3rd, can be called the 'Mumia Place' in Paris – even the police think so as they deny permission to demonstrate here to any other human rights group! So whenever required, Mumia 'invites' Leonard Peltier's supporters, or Hank Skinner's wife Sandrine – Hank Skinner is on death-row Texas, or Odell Barnes' supporters in 2000, to mention only a few.

That's what yesterday, February 3rd, 2021, was about: in spite of the storm and the rain Mumia was our Paris host, with a new banner telling his story as we can no longer give out leaflets because of Covid. We are not as many as we were in 1995, but rarely less than 20 or 30 people with Mumia's banners blowing in the wind - they would be carried away if Christian and other French activists didn't tie them securely. All are friends of Mumia, although very few have met brother Mumia.

Because of Covid and the curfew at 6 pm, yesterday we had to change our meeting time. We asked permission for a 4 to 6 pm rally; police suggested 3.30 to 5.30 so we could be home before 6. And we displayed our new banner with a beautiful portrait of Mumia, a picture taken at SCI Manahoy during our last visit, in December 2019. And his hand-written words 'I want to go home' on it.

I guess you wonder why so many French people have been supporting Mumia for so long? I do too.

How does it come about that so many people care? There are 6000 people receiving e-mails at least



PHOTO: Feb. 3, 2021 Mumia demonstration in Paris, France.

once a month, more if there are new developments, thanks to Jacky and Jonathan's diligence. Jacky also organizes fund-raising campaigns twice a year; we have raised about 500,000 dollars during the past twenty years to help pay the legal fees.

I have written a French biography of Mumia with more than 3000 copies sold for the benefit of Mumia. The Collectif has also sold books, stamps, T-shirts and now masks to raise money. Many parents were supporting Mumia years ago; now the second generation is joining in: their children have grown up and stand up for Mumia. They have read Mumia's books, have worn Mumia lapel-buttons, have listened to Sad Love Song, a song Mumia wrote in prison and sent to Jacques, a musician and a supporter, so we could release the CD in Paris. They have watched the films dedicated to Mumia.

Mumia, locked-up in prison, has established a special bond between people who would never have met otherwise. And Concorde is the location where their paths have crossed for all these prison years.

French people have demonstrated for the Rosenbergs, have marched for Angela Davis and since the mid-seventies have relentlessly stood for Mumia.

They expect bro Mumia to walk home a free man.

He is a role model for all of them.

## Student Power and Mental Liberation: Mumia's Journey to Higher Ed from Inside

Written by the UC-Santa Cruz Mumia Abu-Jamal Solidarity Collective

In 2019, Mumia Abu-Jamal was accepted into the University of California, Santa Cruz as a Ph.D. student with the History of Consciousness department. He continues the radical lineage of Black revolutionaries like Huey P. Newton, whose 1981 thesis is touted as a History of Consciousness accomplishment, and Dr. Angela Y. Davis, a professor emerita of History of Consciousness and Feminist Studies.

Mumia, however, has found many obstacles in engaging with his coursework and has continuously been restricted access to lecture notes, the ability to attend lectures and discussions, and materials. He has been institutionally abandoned since being accepted into the program. Much of the labor of supporting Mumia has come from other students and organizers part of the Campaign to Bring Mumia Home, like Johanna Fernandez, associate professor of History at Baruch College, City University of New York, who played a key role in helping Mumia get into the program in 2019. Mark Taylor, Professor of Theology at Princeton University also helped facilitate the application process.

The department may be progressive in what it teaches, but has in many ways untethered itself from a practice of radical and abolitionist politics by failing to give attention, structural institutional support and aid to Mumia Abu-Jamal as he studies from his currently incarcerated position. We have requested and are ready to demand a subsidized graduate student assistantship that will function as Mumia's eyes and ears on campus and purchase his books in advance of the start of the semester. We also expect the department and the University to initiate a conversation with the PA Department of Corrections to make sure that Mumia is given access to the technology he needs to connect to the classroom.

UC-Santa Cruz celebrates itself as the “authority on questioning authority,” while simultaneously brutally repressing student and worker struggles. Since Mumia's acceptance, we have seen a graduate student movement, demanding a cost of living adjustment (COLA), and several service worker's strikes. These have been met with intense policing and surveillance. After a conversation with UC Santa Cruz students and Professor Fernandez, Mumia shared a statement of solidarity where he compared the COLA movement to the communist sharecroppers movement in Alabama during the 1930s. Refer-

encing Robin D.G Kelley's book Hammer and Hoe, Mumia says “what unites these two periods is the presence of state violence against people truly trying to live better lives, in [the graduate students'] case, trying to pay rent.”

In a similar show of support, Mike Africa Jr spoke at the COLA picket line in Santa Cruz, saying, “It is a crime for any system to give people a wage that is not liveable... if you can't live off the wages that they give, it is time to find a new way. It is time to find a new way and it is time to withdraw your support from that system.”

In the same way that the courts continuously expose their corruption at each step of Mumia's case, the colonial, neoliberal and racist institutional nature of UC-Santa Cruz is also exposed. If our demands that the institution meet Mumia's needs continue to go unmet, perhaps this is another moment to “withdraw [our] support” and “find a new way.” Formerly and currently incarcerated people seeking knowledge in their cells, at universities, and in their communities teach us how to struggle for, as Mumia recently said, “mental liberation and student liberation.” Mumia simply asks to study, just as any other student.



# The Power of Truth is Final: Mumia's New Book Has Just Been Released!

Written By Jennifer Black and Miranda Hanrahan

(This essay entitled "The Power of Truth is Final" was first published as an introduction for Mumia Abu-Jamal's newest book, *Murder Incorporated, Book Three: Perfecting Tyranny*, just released by Prison Radio.)

*Conventional wisdom would have us believe that it is insane to resist this, the mightiest of empires, but what history really shows is that today's empire is tomorrow's ashes; that nothing lasts forever, and that to not resist is to acquiesce in your own oppression. The greatest form of sanity that anyone can exercise is to resist that force that is trying to repress, oppress, and fight down the human spirit.*

—Mumia Abu-Jamal

*As we witness everyday, the brave truth-tellers of the current age are ridiculed, scorned, and marginalized as "raving lunatics." Some are eliminated. When the Empire is questioned or undressed, the noise machine beholden to the elite cries "conspiracy theorist... traitor... apostate"—all of which quickly smears and deprecates this newly crowned "public enemy," one who is unafraid to speak the unspeakable truth.*

—Stephen Vittoria

Mumia Abu-Jamal once famously opined, "The state would rather give me an Uzi than a microphone." More than five decades of intense surveillance, harassment, confinement, repression, and torture levelled against him by Frank Rizzo's Philadelphia Police Department, the Federal Bureau of Investigation, and the Pennsylvania Department of Corrections, have graphically illustrated the truth of those words.

The United States government is terrified of what Mumia has to say. And with good reason. See, there is a reason slaves were never supposed to learn to read or write. A reason prisoners are best kept muted, retained hidden behind walls, unheeded. People like us are not supposed to tell these troublesome truths. The truth, Ramona Africa reminds us, is always dangerous to those pushing the lie.

Mumia tells the truth.

He has always told the truth, and he does it again here, writing alongside Stephen Vittoria in this third

and final installment of their magnum opus *Murder Incorporated*.

These three books—*Dreaming of Empire, America's Favorite Pastime*, and *Perfecting Tyranny*—deconstruct and lay bare the United States experiment in imperialism. Written by a captive rebel living under the hostile eye of the state, this historical trilogy exposes the continuous and deadly hypocrisy of empire.

*Murder Incorporated* builds on the work of Howard Zinn's manifesto *A People's History of the United States*. This work aims to expand the telling of the story of the United States from the front-line perspective of those dispossessed and discarded by the treachery of U.S. imperialist expansion.

It is important to recognize and respect the conditions under which this opus was written. Unlike other twenty-first century scholars, Mumia writes, researches, and publishes having no contact to a university library and no access to the Internet. He has never surfed the world wide web and has no quick access to books, essays, journal articles, or interview subjects. He is only permitted to have seven books in his cell at a time; any more than that are considered contraband.

In researching *Murder Incorporated*, Mumia had to constantly cull his stash of written material, absorbing all he could from each book before getting rid of it to make space for a new one. As has been his process since he first started publishing from prison, he took precise, careful, and scrupulously detailed notes of every book and article he read, along with page numbers and citation information. He wrote as small as possible, to fit as much material as he could into his limited number of notebooks.

At what other time and place has a history of this scope—a thoroughly detailed overview of a nation's crimes of colonization from its inception to the present day—been crafted under such draconian measures? When has such a record of the crimes of a state been created by one of the state's own victims, with every word penned under the state's pretense of control?

Consider the barriers placed in the way of Abu-Jamal's and Vittoria's intellectual collaboration. Mumia's access to visitation is strictly limited, and he can only speak on the telephone for fifteen minutes at a time, once a day. Just one fifteen-minute call, if he can get the guard to put in a slip

for it. He is permitted two visits a week, to which he cannot bring even a pencil or piece of paper. He endures a full-body cavity strip search before and after every visit. For nearly a decade he was denied visits and phone calls. For two decades, and the first nine of his books, he wrote everything by hand with the mere cartridge of a ballpoint pen.

All visits are supervised, all phone calls recorded and surveilled, and all his mail is read by prison staff. Letters, books, or papers deemed "inappropriate" by the mailroom censors are discarded before they reach him.

In order to build the intellectual partnership that created *Murder Incorporated*, Vittoria and Abu-Jamal had to overcome the state's exhaustive efforts to limit Mumia's contact with the outside world. These are some of the constraints under which *Murder Incorporated* was researched and written. Abu-Jamal and Vittoria's success is a testimony to their will, determination, and bond as writing partners.

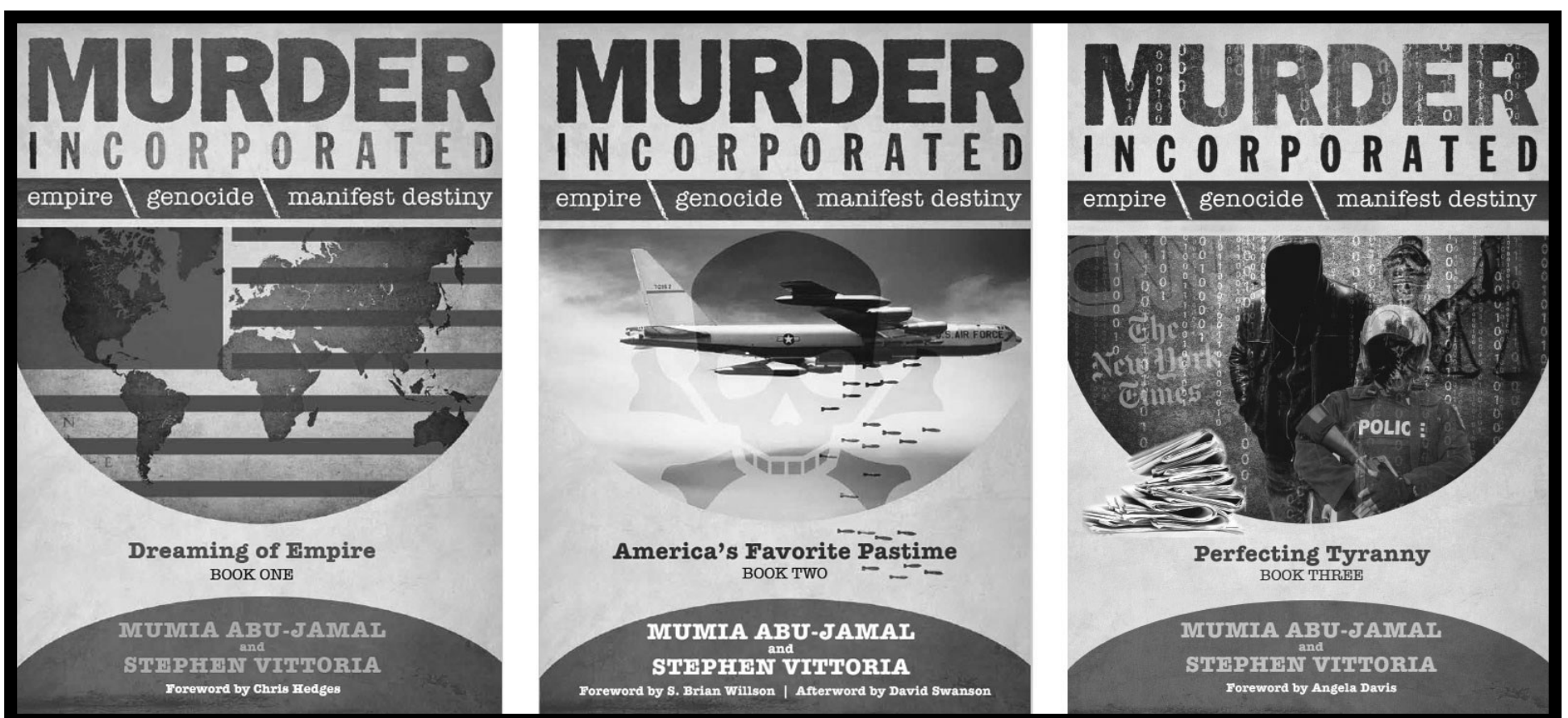
The book you hold in your hands today is an act of protest and dissent. Its very existence defies the repression of the state. So does its content. While *Murder Incorporated* can and should be used in the polished hallways of academia, it is deeply rooted in the proud tradition of American protest literature.

Vittoria and Abu-Jamal seek to advance the interests of the exploited, evicted, imprisoned, and marginalized working class people by telling a history that does not flinch from the truth.

In this project, *Murder Incorporated* positions itself alongside Eduardo Galeano's *Open Veins of Latin America*, Vincent Harding's *There is a River*, and Robert Fisk's *The Great War for Civilisation* by embracing the historic imperative of truth telling. Like those great works, *Murder Incorporated* makes an intergenerationally significant contribution to the bank of historical political thought and social movement theory.

It is no accident that *Murder Incorporated* was co-written by a man in prison, a man who has spent the lion's share of his life on death row. Scholar Joy James suggests that prisons function as political and intellectual sites that are largely hidden from our mainstream discourse. Those warehoused within write with "unique and controversial insights into idealism, warfare, and social justice."

Continued on page 9...



...Continued from page 8:  
**The Power of Truth is Final**

Thus, the prisoner, who is denied access to any of the privileges and protections afforded to citizens of the state, who is subjected instead to indignity and deprivations, is uniquely empowered to criticize the state. Moreover, because the prison writer typically has no access to editors or publishers, and writes with no expectation of receiving remuneration from their writing, they are able to write what they know to be true. Their words are uncompromised.

In this regard the prisoner is free in a way that no one else is free. Mumia has nothing to lose from telling the truth. The state has already done everything in its power to silence him. There are no remaining threats that can be leveled against him. There is no tactic of abuse or control left in the state's arsenal that it not already been inflicted on him. He has withstood beatings, torture, and near-fatal gunshot wounds.

From the time he was fourteen years old, working as a young organizer for the Black Panther Party, he had already earned security index status from J. Edgar Hoover's FBI. He spent his teen years and early twenties under unyielding police surveillance and harassment.

Since his arrest and framing in 1981, he has weathered forty years of incarceration—separated from friends, family, and community. Twenty-eight of those years he spent in solitary confinement with a pending execution.

He survived two death warrants, each of which gave him thirty days to live. He survived a life threatening battle with complications from Hepatitis C, dragging himself back from the brink of death after the prison's vicious and deliberate medical neglect sent him into a coma.

He won court battles to overturn laws written and passed by the Pennsylvania legislature with the express specific purpose of forbidding him from publishing his writing. Censorship was discussed at the federal level, on the Senate floor. None of it has stopped him.

He is perhaps the world's most prolific imprisoned radical. *Perfecting Tyranny* is his twelfth published book, and he has authored thousands of radio commentaries.

Within a month after being shot and arrested in 1981, he was writing essays from Holmesburg Prison. When warrants were issued for his death in 1995 and 1999 while he sat awaiting execution, Mumia still continued to write. Recovering from near death in the prison infirmary in 2015, Mumia continued to write. And why not?

The state has already made up its mind to kill him. He is alive because he, and the movement behind him, have fought the state at every turn, sometimes winning extraordinary victories—like the overturning of his death sentence—and sometimes grinding into a bitter stalemate, but never giving up ground. The state has not refrained from killing Mumia: it has failed to kill Mumia. What possible incentive could he have to flinch from the truth?

Given the forces arrayed against Mumia, it may appear as a miracle that this book—or any of Mumia's eleven previous books—was published at all. It was no miracle. It was the hard work of a movement.

Mumia's relentless courage and resilience, and Stephen Vittoria's triumphant accompaniment, created an intellectual bond that would not be denied. This, combined with the dedication and unswerving solidarity of hundreds of thousands of activists and artists and lawyers across the country and the globe, have forced this book through the bars of the prison into printing presses and into bookstores.

This book is a reminder of our individual and collective power. The great Howard Zinn once remarked that to be hopeful in catastrophic times is not naive. Rather, it reflects an understanding that history is as much about courage and sacrifice as it is about cruelty. Abu-Jamal and Vittoria teach us the same lesson.

Mumia Abu-Jamal, relegated to a carceral underworld, has funneled his harrowing experience of captivity into an extraordinary act of truth-telling that benefits our common survival.

Stephen Vittoria imparts his searing analysis, poignant honesty, and tremendous tenacity to craft this labor of courage and love and get it past the censors so that this vital work could be in our hands.

Mumia cautions us to remember that "What history really shows us is that today's empire is tomorrow's ashes, that nothing lasts forever." It is humbling to be taught this lesson from one of our nation's most famous political prisoners, who is also a scholar, a revolutionary, and an educator.

A gift to us, and a labor of love, this final book in the remarkable trilogy *Murder Incorporated* is the result of unwavering and courageous commitment. It elevates our human spirits and encourages us to have full faith in our ability to change the world.

Again we recall the wisdom of Ramona Africa: the truth is dangerous to those whose power depends on the lie. This book is dangerous. This is why slaves were never taught to write. This is what happens when prisoners contribute to the bank of political thought.

Empires hold their power through the silence of their victims; by breaking that silence, Mumia deals a devastating blow to the empire that cages him. *Murder Incorporated* exposes all the dirty, vulgar, shameful actions of the United States—hundreds of pages of the state's blunt secrets revealed, exposing the continuous and deadly hypocrisy of the empire.

This historic collaboration between Stephen Vittoria and Mumia Abu-Jamal stands amid the pantheon of social dissent against tyranny and despotism. Its hope and optimism stand as testimony to the unstoppable resilience of the human spirit.

—For more information, please visit: [www.murder-incorporated.org](http://www.murder-incorporated.org)

## Dec. 9, 2020 West Philly Press Conference Photos by Jamal Journal staff photographer Joe Piette

Reporting on the 52nd and Larchwood press conference for Workers World, Betsey Piette writes:

Pam Africa unveiled a local campaign to rename a Philadelphia street "Mumia Abu-Jamal Way." Freed MOVE 9 members Janet and Janine Africa spoke and denounced the Philadelphia City Council's recent apology for the city having imprisoned them for 41 years, calling it a "public relations stunt."

Janine Africa stated: "An apology with no action behind it is meaningless. Show us a symbol of your sincerity by releasing Mumia Abu-Jamal."

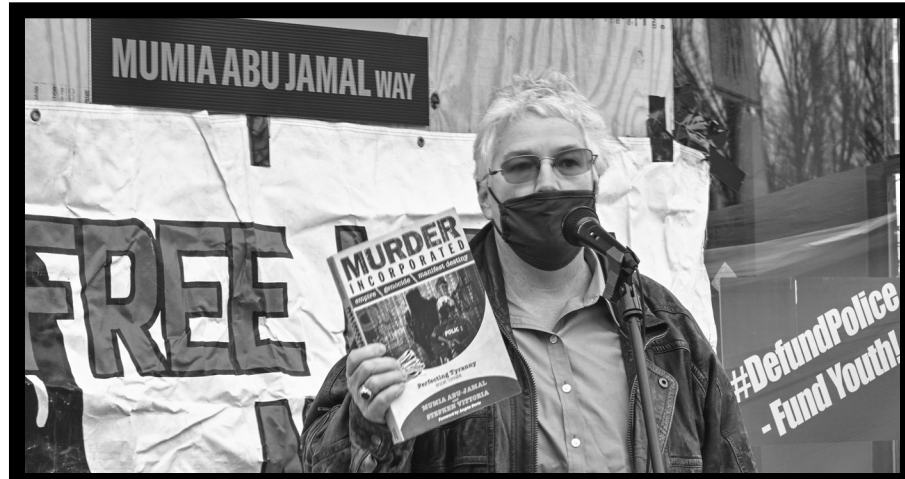


PHOTO: Noelle Hanrahan of Prison Radio announces the release of Mumia's twelfth book, and the third volume of *Murder Incorporated*.



PHOTO: Pam Africa speaks to the crowd at 52nd and Larchwood.



PHOTO: YahNé Ndgo, from Black Lives Matter and the Black Radical Collective speaks in support of Mumia.



PHOTO: In May 2019, MOVE 9 members Janet and Janine Africa were granted parole and released from prison. Here they call for Mumia's release.



# Supreme Corruption in Pennsylvania: Watching Injustice Fester For 341,880 Hours

Written by Linn Washington Jr.

[www.thiscantbehappening.net](http://www.thiscantbehappening.net)

The murder of Philadelphia Police Officer Daniel Faulkner is a crime I've reported on, researched and monitored since its occurrence in the pre-dawn hours of Wednesday December 9, 1981.

Thirty-seven years after Faulkner's murder, in December 2018, Philadelphia prosecutors stumbled across six boxes stashed in a forgotten area in their office complex that contained startling evidence related to the man convicted of Faulkner's murder.

For me, the discovery of those boxes provided both confirmation and consternation.

Those boxes contained documents that seriously undermine the conviction of Mumia Abu-Jamal, an award-winning journalist who's spent nearly 40-years behind bars for Faulkner's murder.

The law required prosecutors to provide items in those boxes to Abu-Jamal's lawyer before the 1982 trial that sent Abu-Jamal to death row. Abu-Jamal spent thirty-years on death row before conversion of his sentence to life-in-prison.

Given the fact that my deep dives into Abu-Jamal's case have plunged me through an ooze of illegal conduct against Abu-Jamal by prosecutors, police and judges, this act of prosecutors disappearing boxes that contain evidence of innocence provided additional confirmation of injustices endured by Abu-Jamal.

The consternation for me from those boxes came from the contents in one box.

That content was about me.

Documents in that box documented that authorities involved in keeping Abu-Jamal imprisoned conducted a criminal background check on me in 2001. Authorities conducted that check in their attempt to dig up dirt they hoped could discredit my reportage on their misconduct.

Remember, misconduct by authorities initially secured and then sustained Abu-Jamal's conviction.

I caption my reaction to this malicious criminal background check as consternation because such slime-ball action was not surprising considering the record of misconduct by authorities since the December 1981 arrest of Abu-Jamal.

One document in those rediscovered boxes is a letter from a prime witness for the prosecution during Abu-Jamal's 1982 trial. That witness wrote that letter to the trial prosecution shortly after Abu-Jamal's conviction asking a single question: "... where's my money?"

One logical question from that 'where's-my-



PHOTO: Veteran journalist and Temple University professor Linn Washington Jr. speaks about Mumia's case outside DA Larry Krasner's office on Oct. 25, 2018. Photo by Joe Piette.

money' inquiry is: was that witness promised payment by prosecutors to testify against Abu-Jamal?

Given the fact that prosecutors provide transportation to court for their prime witnesses it's unlikely that money inquiry was a reminder about reimbursement for travel expenses. And, given the fact that prosecutors provide food during court proceedings for their prime witnesses, it's unlikely that inquiry referenced reimbursement of money spent on lunch.

That witness, a cab driver named Chobert, was driving his cab on December 9, 1981 without a valid driver's license because of a suspension of that license for drunk driving. At the time when Chobert said he saw Abu-Jamal shoot Faulkner, Chobert was on probation for tossing a firebomb into a school building.

Given the fact that Chobert was illegally operating a cab while on probation, it's unlikely that he would casually park his cab behind a police car then engaged in enforcement.

Chobert testified he saw Faulkner's fatal shooting while parked behind Faulkner's patrol car. But no police crime scene photographs show Chobert's cab behind Faulkner's patrol car.

Two issues arise from Chobert's cab missing in crime scene photos.

Did Philadelphia police tamper with evidence by removing Chobert's cab from the crime scene before photos were taken? Or was Chobert never parked behind Faulkner's car thus making his trial testimony a lie?

Inside one of those rediscovered boxes is a report from a policeman who stated a police lieutenant ordered him to ride along with the "cab driver" to the homicide division where detectives interviewed the cab driver. Chobert is the only cab driver referenced in the Abu-Jamal case.

The jury that convicted Abu-Jamal in 1982 never heard of Chobert's illegal driving, his probation status or that fact that he faced 5-7-years in prison if authorities revoked his probation for illegal conduct...like driving on a suspended license. (Staying out of prison is strong incentive to provide false testimony with or without receiving money for that false testimony.)

The judge at Abu-Jamal's 1982 trial specifically blocked the jury from hearing about Chobert's criminal background. That same judge,

Albert Sabo, during a pivotal 1995 appeals hearing came to Chobert's defense again.

During that 1995 hearing, Chobert testified that during the 1982 trial he asked the prosecutor to help him get off probation and get his license back. Chobert testified that the prosecutor told him he would look into fulfilling Chobert's requests. Sabo ruled in 1995 that the prosecutor in 1982 did not engage in misconduct by failing to inform Abu-Jamal's trial lawyer about the arguable quid pro quo exchange(s) between Chobert and the prosecutor.

"Clearly the fact that Chobert at least believed that [the prosecutor] was going to 'look into' getting his license back should or could have led some jurors to suspect that his subsequent testimony about what he alleged to have seen Mumia do was designed to get him his license back," investigative reporter Dave Lindorff observed. Lindorff is the author of *Killing Time: An Investigation into the Death Row Case of Mumia Abu-Jamal*, the first independent and still most comprehensive examination of the Abu-Jamal case.

Judge Sabo, before the start of the 1982 trial, declared he would help prosecutors "fry the nigger" according to a person who overheard that bigoted, fair-trial-rights violating declaration.

The obvious misconduct in Chobert's obviously tainted trial testimony and the equally outrageous misconduct of racist Judge Sabo have both been ruled legally proper by state and federal courts. Those rulings evidence anti-Abu-Jamal postures from police up through the highest appellate courts, including the Supreme Courts of Pennsylvania and the United States.

As an Amnesty International report on the Abu-Jamal case released in 2000 noted, "The record in this case indicates a pattern of events that compromised Abu-Jamal's right to a fair trial, including irregularities in the police investigation and the prosecution's presentation of the case [plus] the appearance of judicial bias..."

Earlier this year, the Supreme Court of Pennsylvania erected another roadblock to Abu-Jamal's latest appeal. That Court granted an unusual delay in the appeal process requested by long-time enemies of Abu-Jamal: Philadelphia's police union and the remarried widow of Officer Faulkner.

Those enemies want the removal of Philadelphia's DA Office from Abu-Jamal's current appeal on the specious claim that Philadelphia prosecutors were not vigorous enough in opposing Abu-Jamal's quest for justice. Philly's current prosecutors have battled against Abu-Jamal's appeal. However, those prose-

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PHOTO: Free Mumia protest in the Germantown neighborhood of Philadelphia on April 27, 2019. Photo by Joe Piette.



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**Supreme Corruption in Pennsylvania**

cutors have not engaged in unprofessional and illegal antics [misconduct] to keep Abu-Jamal incarcerated like their predecessors. That no misconduct stance, while legally proper, seemingly irritates Abu-Jamal's enemies.

Misconduct by members of Pennsylvania's Supreme Court in legal proceedings involving Abu-Jamal is a key element in his now stalled appeal.

For example, during an important 1998 ruling upholding Abu-Jamal's conviction, five of the seven Pa Supreme Court members on that unanimous decision had received political contributions and other campaign assistance from police organizations then seeking Abu-Jamal's execution. One of those five – Ronald Castille – was Philadelphia's former DA who battled to keep Abu-Jamal on death row.

Having five members of a seven member Supreme Court arguably in the pocket of enemies of Abu-Jamal makes a farce of the fundamental fairness all defendants are supposed to receive from judges.

That 1998 involvement of DA turned Justice Castille violated provisions of Pennsylvania's Code of Judicial Conduct that was in force in 1998. Further, in 2016, the U.S. Supreme Court blasted Castille for his legally improper dual DA/Justice role in another Philadelphia death penalty case.

Based on the legal precedent of that U.S. Supreme Court ruling, the involvement of Castille in Abu-Jamal's appeals should be automatic grounds for relief if the Pa Supreme Court was not institutionally biased against Abu-Jamal.

As acclaimed activist, Angela Davis, noted during a press conference on the Mumia case in mid-November, "The framing of Mumia and his repression is part of a wider story of structural racism and police brutality."

For many, Faulkner's murder is a case closed 39-years ago with the conviction of Abu-Jamal. However, millions around the world view the conviction of Abu-Jamal as classic and continuing injustice.

Abu-Jamal has maintained his innocence since his Wednesday December 9, 1981 arrest. That's 468 months, 14,245 days, 341,880 hours and over 20-million minutes as of Wednesday December 9, 2020.

## PA Supreme Court rejects Maureen Faulkner's 'Evidence-Free' Effort to Block Mumia's Appeal

By Dave Lindorff  
This Can't Be Happening!  
December 22, 2020

Mumia Abu-Jamal, the prison journalist long known as the "voice of the voiceless" for his compelling writings and short audio tapes about life behind bars, moved a step closer to getting a chance for a reconsideration of his earliest appeal of his conviction — an allegedly flawed Post-Conviction Relief Act hearing in 1995, as well as three other later PCRA appeals of aspects his case, all ignored and their findings rejected by Pennsylvania's appellate courts under spurious conditions.

The opening comes in the form of dismissal by the state's Supreme Court of an attempt by Maureen Faulkner, widow of slain Philadelphia Police Officer Daniel Faulkner, to use an obscure legal gambit called a King's Bench petition, to have DA Larry Krasner's office removed as the legal entity defending against Abu-Jamal's appeals. That effort, filed last February had blocked any forward action on those appeals.

Abu-Jamal's attorneys had filed an appeal several years ago in Philadelphia's Court of Common Pleas, claiming that the handling of those four PCRA hearings, all of which were rejected by the State Supreme Court, were all constitutionally flawed because one of the judges reviewing them, Justice and eventually Chief Justice Ronald D. Castille (now retired), had refused Abu-Jamal's requests that he recuse himself, despite his having been Philadelphia's district attorney and the man overseeing the DA Office's legal effort to oppose Abu-Jamal's appeals of his sentence and conviction.

That appeal was filed following the discovery of two notes — a draft letter and a final letter by then DA Castille to then Gov. Tom Ridge in 1990 calling on Ridge to speed up the signing of execution warrants for convicted "police killers" in which Castille said such a measure would "send a message" to would be police killers.

The appeal also came following a 2016 US Su-

preme Court ruling in a case called *Williams v. Pennsylvania*, in which another Philadelphia defendant convicted of murder sentenced to death was granted a new penalty phase trial because the same Justice Castille had as DA approved his prosecutor seeking the death penalty, and then did not agree to recuse himself in considering an appeal of that sentence.

### The Six Discovered File Boxes

Abu-Jamal's new legal effort gained urgency when in late December 2018, newly elected progressive DA Krasner (elected in Nov. 2017), reported discovering, in an unused storeroom of the DA's office, six file boxes containing a vast number of documents relating to Abu-Jamal's case.

Many of these documents were found to be dated from around the time of his 1982 trial, and including material that should, under the US Supreme Court's 1963 Brady decision, have been disclosed by to Abu-Jamal and his defense team at the time of the trial or, depending on the date of their production, before his 1995 PCRA hearing.

Among these documents was, for example, a shocking letter from a key prosecution witness, a young white taxi driver Robert Chobert, asking prosecuting attorney Joseph McGill, "Where is my money?"

As journalist Linn Washington has noted, Chobert, as a prosecution witness, was unlikely to have been asking for reimbursement for travel to court, or for meals as a witness, "Because typically as a key prosecution witness he would have been brought to and from court by police officers, and would have been provided with his meals and hotel room by the DA's office, not expected to front his expenses himself and then get reimbursed."

Chobert was indeed a critical prosecution witness, as he claimed at the trial to have parked his taxi directly behind Faulkner's patrol car, and that from that position to have witnessed Abu-Jamal allegedly firing multiple times down at the prone Faulkner on the sidewalk with his licensed snub-

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PHOTO: Marching through the Germantown neighborhood of Philadelphia on April 27, 2019. Photo by Jamal Journal staff photographer Joe Piette.

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### PA Supreme Court rejects Maureen Faulkner's 'Evidence-Free' Effort to Block Mumia Abu-Jamal's Appeal

nosed pistol.

That testimony has been challenged by many because photos of the crime scene taken almost immediately after the shooting do not show a taxi cab behind Faulkner's squad car.

Also many people familiar with this case, this journalist included, find it hard to believe that Chobert, who at the time was driving his taxi cab illegally because his license had been revoked following a DWI conviction, and who moreover, was also at the time on probation on a five-year sentence for felony arson of an elementary school, would have pulled up and parked directly behind a cop car.

In fact, it is likely that Chobert was actually parked a block away on 13th street north of Locust where the shooting incident occurred, his vehicle pointing away from the scene. This would explain why no other witness, for either prosecution or defense, ever mentioned either in court testimony or in statements to police investigators seeing a taxi cab near Faulkner's car or the shooting, and why the other main eye witness, the prostitute Cynthia White, in a drawing she made of the scene for police detectives, drew Faulkner's car, Abu-Jamal's brother's VW in front of it, and even an uninvolved Ford sedan in front of that, but no taxi.

The idea that there was a letter from Chobert asking the DA for "my money" that was not provided to the defense between his 1982 trial and the time when Chobert was recalled to testify at the 1995 PCRA, is certainly appalling. It appears on its face to be a serious case of probable prosecutorial misconduct, or the type of evidence that, if known by a jury considering a murder conviction, could have led to a different outcome. (Jury decisions in felony cases have to be unanimous for conviction, so even one juror voting no to conviction makes it a hung trial.)

Also important in those discovered boxes were other documents further suggesting that Judge Castille, while DA, contrary to his own assertion, was indeed directly monitoring not only the disposition of his office's death penalty cases, but how his office's felony appeals unit was handling the legal effort to oppose Abu-Jamal's appeals as they moved up through the state's court system.

Common Pleas Judge Leon Tucker disagreed with Castille's decision on recusal in the Supreme Court's consideration of Abu-Jamal's various PCRA hearings. In supporting Abu-Jamal's motion to have four of his rejected PCRA hearings re-considered, or reopened, because of Justice Castille's failure to recuse, he cited the US Supreme Court's *Williams* precedent.

In that 2016 precedent-setting decision, the US Supreme Court ordered a new sentencing jury trial for the convicted and condemned Terrance Williams, finding that the same Justice Castille's refusal to recuse himself after having as DA approved a subordinate prosecutor's request to seek the death penalty, had "violated the Due Process Clause of the [US Constitution's] Fourteenth Amendment."

Using forceful language, the Judge Tucker wrote, regarding Abu-Jamal's petition:

"The claim of bias, prejudice and refusal of former Justice Castille to recuse himself is worthy of consideration as true justice must be completely just without even a hint of partiality, lack of integrity or impropriety."

Tucker added, citing the US High Court's *Williams* ruling:

"If a judge served as prosecutor and then the judge,

there is a finding of automatic bias and a due process violation...The court finds that recusal by Justice Castille would have been appropriate to ensure the neutrality of the judicial process in [Abu-Jamal's appeals] before the Pennsylvania Supreme Court."

The ruling by Tucker (the first African American jurist

to have heard any aspect of the Abu-Jamal case or any of his appeals over four decades), was properly viewed (including by the widow Faulkner and the Philadelphia Fraternal Order of Police) as a stunning breakthrough, offering Abu-Jamal, for the first time in more than two decades, an opportunity to have his conviction, not just his now-vacated death sentence, reconsidered.

#### The King's Bench Petition

But that appeal was halted in its tracks earlier this year when Maureen Faulkner, the widow of the slain Officer Daniel Faulkner, backed by the FOP, filed in Supreme Court a rarely used King's Bench petition — a hoary legal maneuver dating to pre-Revolutionary British Common Law — arguing that DA Krasner, a progressive former defense attorney who won election as DA in November 2017, was prejudiced in favor of Abu-Jamal and should be barred from defending against his appeal petition.

Faulkner's King's Bench petition made a number of factually erroneous or baseless claims that Krasner had a pro-Abu-Jamal bias. Her attorney, George Bochetto, made nine claims to support his client's contention about Krasner.

Among these were the assertion that the new progressive DA had been a member of the National Lawyer's Guild, a civil rights organization of mostly leftist activist attorneys, some of whose Philadelphia chapter members in 2000 had defended protesters at the 2000 Republican National Convention in Philadelphia, calling for Abu-Jamal's freedom; that Krasner had publicly referred to "some prosecutors" in the DA's office as being "war criminals;" and that he had not tried to challenge or delay Judge Tucker's order authorizing a new PCRA to consider the cartons of hidden and unreported documents relating to Abu-Jamal's case.

The Pennsylvania Supreme Court on Dec. 16, in a 3-1 ruling (signed by Justices Christine Donohue, David Wecht and Kevin Dougherty, with Justice Sallie Updike Mundy dissenting and three justices who had sat on the Supreme Court with Justice Castille recusing themselves because of a real or perceived conflict of interest), supported the conclusion of that court's appointed "master," McKean County Judge John M. Cleland. Judge Cleland, after a lengthy and detailed investigation at the request of the court that included interviews with Krasner and other witnesses, had recommended rejection of the King's Bench petition. He reported that he'd found no "direct evidence of a conflict of interest" or even "an appearance of impropriety" that would "compromise" DA Krasner's ability to "carry out his responsibilities," in defending against Abu-Jamal's appeal of his PCRA rejections. The court master learned for example that Krasner had never paid dues to be a member of the NLG and in any event was not personally involved in defending any pro-Mumia protesters arrested at the convention. He said he found other Faulkner claims regarding Krasner



PHOTO: Free Mumia protest marches through the Germantown neighborhood of Philadelphia on April 27, 2019. Photo by Joe Piette.

bias to be similarly without any factual basis.

As Judge Cleland concluded in his report to the court:

"A perception based on the arguments of detractors cannot overcome the actual and undisputed fact that Ms. Faulkner has presented no evidence that Krasner or his assistants have not defended the conviction of Mumia Abu-Jamal or do not intend to do so in the future."

He added:

"No credible argument has been made that Krasner and his assistants have adopted legal positions or legal strategies that do not have arguable merit or are not supported in law based on the facts."

Abu-Jamal Attorney Judy Ritter tells *ThisCantBeHappening!*, "The King's Bench petition has been dismissed, and that decision cannot be appealed. Now our case involving the four rejected PCRA hearings can go forward."

So too will the long-delayed evidentiary hearing into the contents of those six boxes of prosecutorial documents relating to the case — documents that prior DAs from Ed Rendell through Ron Castille, Lynn Abraham, Seth Williams to Kelly Hodge had illegally kept undeclared and hidden away from Abu-Jamal and his lawyers for four decades.

What happens next will be a hearing before a superior court panel on Abu-Jamal's petition for reconsideration of his PCRAs into whether the newly discovered documents pose a Brady violation in his initial trial or later during his PCRA hearings. That panel can make a determination, refer the case to a Superior Court judge, or decide to move everything directly to the Pennsylvania Supreme Court — a court that will no longer have the controversial Justice Castille, now retired, sitting on it.

Abu-Jamal's appeal prospects in that court could be iffy, given the recusal already in the current case by three of the court's seven judges, and by negative comments about the applicability of the Supreme Court's *Williams* precedent to Abu-Jamal's case filed by one of the three judges who concurred in the 3-1 decision, not to mention the dissent by one judge.

Pennsylvania's higher courts have been notorious for showing a proclivity for denying this particular prisoner, Abu-Jamal, the benefits of precedents routinely made available to less notorious appellants — a point specifically noted by Judge Thomas Ambro, one of the three federal Circuit Court judges who heard his last appeal of his conviction, and who dissented when that panel voted 2-1 to uphold his murder conviction, saying "I don't see why this appellant isn't afforded the benefit of the same precedents as other appellants."

With only four current justices able to consider

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**PA Supreme Court rejects Maureen Faulkner's 'Evidence-Free' Effort to Block Mumia Abu-Jamal's Appeal**

Abu-Jamal's case at present, two of whom have expressed their opposition to the appeal already (Dougherty in a critical concurring opinion and Mundy by her dissent in the King's Bench petition), there would be a potential for a tie vote, which would leave any superior court order standing. Though given the time the appeals process takes, it is also likely that Chief Justice Saylor, a Castille court era holdover, whose will be leaving the court at the end of his term next year, will have been replaced by a fifth Justice who could participate in any ruling. (The Supreme Court can also appoint a temporary lower court judge to sit in judgement on a case if there is a danger of a tie because of recusals or other absences from the bench.)

That said, one of the justices who voted with the majority of the state Supreme Court to reject Faulkner's petition, David Wecht, wrote a powerful 20-page concurring opinion supporting the court's King's Bench petition rejection. In that concurrence, he included a blistering dismissal of the negative comments about DA Krasner and Abu-Jamal's case made by his court colleague Justice Kevin Dougherty, writing:

"The dearth of evidence in the record to support Ms. Faulkner's allegations does not deter my learned colleague, Justice Dougherty, with whose perspective I respectfully disagree. Justice Dougherty elects to forego the requirement that we afford supported factual findings due consideration and chooses instead to ignore those findings and reach his own conclusions. Notwithstanding the broad prerogatives attendant to our review at King's Bench, this approach strikes me here as unwise and in any event unavailing. It is axiomatic that we afford due consideration to fact-finders, because 'the jurist who presided over the hearings was in the best position to determine the facts.' I see no reason not to give Judge Cleland's findings their due 'consideration.'"

After several pages devoted to a thorough debunking of Dougherty's evidence-free claims of purporting to demonstrate Krasner's pro-Mumia bias, Wecht writes:

"From that empty bucket, Justice Dougherty somehow nonetheless finds paint to compose a 'disturbing picture.' However vast our authority in cases such as this one is, our standard of review still does not permit such creations."

Justice Wecht also debunks, in his concurring opinion, the arguments of Justice Mundy, the lone dissenter to the decision rejecting Faulkner's King's Bench petition, writing:

"Justice Mundy's dissent fares no better. Like Justice Dougherty, Justice Mundy elects to premise her analysis upon Ms. Faulkner's allegations, ignoring the fact record as it now stands and the decisions that Judge Cleland made based upon that record. As opposed to Justice Dougherty, Justice Mundy would resolve the matter [regarding Abu-Jamal's right to appeal for a reconsideration of four PCRA's where Judge Tucker found Justice Castille should have recused himself] instead of awaiting a future ruling based upon Reid. However, like Justice Dougherty, Justice Mundy makes no serious attempt to explain if, or how, Judge Cleland's fact-finding was undeserving of our due consideration. Consequently, Justice Mundy's position fails for the same reasons that undercut the position advanced by Justice Dougherty."

Since 2001 when his death sentence was finally ruled unconstitutional and converted to a sentence of life without chance of parole, Abu-Jamal has spent nearly 20 additional years in prison, some of that time still held in solitary confinement on the state's death row while the DA battled all the way to the US Supreme Court trying unsuccessfully to have his death sentence reinstated. Now 66, he is suffering from cirrhosis of the liver from a Hepatitis C infection contracted while in prison and left untreated for some time until he won a federal lawsuit mandating that effective treatment be belatedly made available to him.

Over the years, Abu-Jamal, referred to by supporters and opponents alike by his first name Mumia, has been the focus of intense efforts by the Philadelphia FOP, which, along with Faulkner's widow, has campaigned doggedly since his murder conviction to have him executed, and, since his death sentence was overturned on Constitutional grounds, to keep him locked up and denied avenues of appeal.

Meanwhile, a global campaign seeking his freedom continues to demand his release from prison, arguing that he never received a fair trial and that, as he has always maintained, he did not murder Officer Faulkner.

That Abu-Jamal did not receive a fair trial is clear given how the trial judge, the late Albert Sabo, a jurist notorious for having both the greatest number of death penalty notches on his belt of any jurist in the US, and the most convictions and death sentences overturned on appeal, repeatedly denied defense



PHOTO: April 27, 2019. Photo by Joe Piette.

requests for subpoenas and witnesses, and allowed the prosecutor, in his summation to the jury, to make spurious references to Abu-Jamal's having been a member of the Black Panther Party as a 15-year-old kid.

That Abu-Jamal didn't receive a fair appeal process is even clearer.

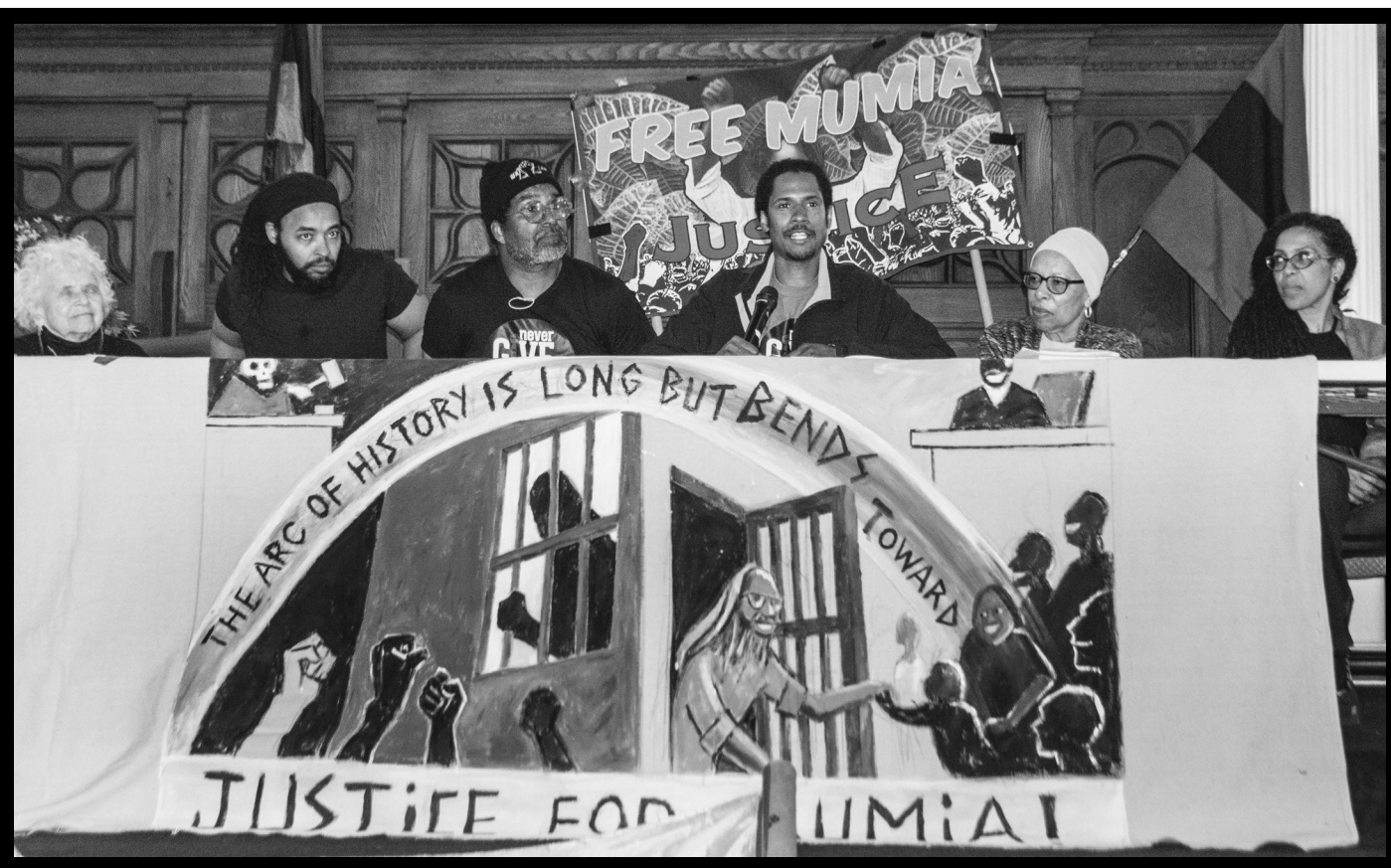
First there's the fact that Judge Sabo was controversially recalled from retirement to preside over Abu-Jamal's initial PCRA, where he was being asked to rule on claims about his own decisions as a judge at the original trial. In that PCRA, Sabo proved so biased in his rulings on things like permissible testimony and requests for subpoenas of witnesses that even the Philadelphia Inquirer, no backer of Abu-Jamal, editorialized calling the judge's behavior at the hearing "embarrassing."

The corruption of that case has been made even more abundantly clear by Judge Tucker's comments on Castille's failure to recuse himself in the Supreme Court's ruling on Abu-Jamal's PCRA's, and by the recent discovery of the hidden crates of prosecution documents in the DA's office that were never revealed to the defense in the case.

The existence of those documents in themselves is a clear violation of the US Supreme Court's 1963 Brady policy, which requires that prosecutors provide defendants in criminal cases with all evidence in their possession that might conceivably help exonerate a defendant.

Whatever the future holds, this case is not going away, and Abu-Jamal and his defense team are headed, finally, to a Pennsylvania superior court hearing on Judge Tucker's ruling granting Abu-Jamal the right to challenge the earlier rejection of his PCRA hearing findings by Pennsylvania's higher appellate courts. Beyond that, should the appeal for reconsideration of his four rejected PCRA's and for the chance to have a further PCRA hearing on the new evidence that could challenge his conviction be rejected, he could — though over the years the Congress and the US Supreme Court have made it increasingly difficult — have an opportunity to bring his case back into federal court with a second habeas petition.

—DAVE LINDORFF is the author of "Killing Time: An Investigation into the Death Penalty Case of Mumia Abu-Jamal" (Common Courage Press, 2003)



Mike Africa Jr. speaks at the April 27, 2019 event. Photo by Jamal Journal staff photographer Joe Piette.



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**Online Petition to DA Larry Krasner**

Today, Mumia Abu-Jamal is in poor health, now suffering from cirrhosis of the liver, the result of a recent near-fatal bout with Hepatitis C, which went unattended until attorneys sued the Pennsylvania Department of Corrections for failure to meet his most elementary healthcare needs. Abu-Jamal's continued imprisonment clearly endangers his health.

Therefore, we respectfully urge you, in the strongest possible terms, to stop defending Mumia Abu-Jamal's conviction. Please secure the release of Mumia Abu-Jamal as soon as you possibly can.

Sincerely,

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#### Why:

DA Krasner, you have the authority to secure the release of Mumia Abu-Jamal. You have secured release of over a dozen persons whose unjust convictions were based on evidence of innocence deliberately ignored through improprieties by police and

prosecutors. Abu-Jamal deserves the same level of fairness.

Mr. Krasner, if law has plain letter meaning, then please adhere to the 1889 directive from the Supreme Court of Pennsylvania that the District Attorney's Office "...seeks justice only..." Also remember that same Court's 1959 reminder that regardless of a DA's belief in guilt, all defendants are "...entitled to all safeguards of a fair trial as announced in the Constitution..."

#### Evidence Supporting our Demand:

The racism throughout Abu-Jamal's case is stark and unmistakable. Please remember that Albert Sabo, the 1982 trial judge, declared his intent to help prosecutors "fry the ni\*\*er," according to an 2001 affidavit by a court stenographer that was rejected by the Court. This and other egregious examples of overt racism thus form a key reason why he has attracted such wide-ranging support. This support includes the most prominent Black intellectuals of our generation, including Nobel Prize winner Toni Morrison, Alice Walker, Angela Davis, Cornel West, Henry Louis Gates, Jr, Michael Eric Dyson, and

Marc Lamont Hill. In November, the blacklisted football player and anti-racist activist Colin Kaepernick declared his support for Abu-Jamal. Outside the US, support for Mumia has come from such luminaries as Nelson Mandela and Bishop Desmond Tutu, as well as the European Parliament, Japanese Diet and the country of France. The widely-respected human rights organization Amnesty International determined in its 2000 investigation that "numerous aspects of this case clearly failed to meet minimum international standards safeguarding the fairness of legal proceedings."

One example of the injustice is the Batson issue regarding racial discrimination in the jury selection process. Even before your office's discovery of the six previously undisclosed file boxes, we already knew that the trial prosecutor, Assistant DA Joseph McGill used 10-11 of his 15 peremptory challenges to strike otherwise qualified black potential jurors. In his 2008 dissenting opinion, federal Third Circuit Judge Thomas Ambro argued that this one fact alone was sufficient evidence for granting Abu-Jamal a Batson hearing. Therefore, he argued that the Third

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## How the Philadelphia District Attorney's Office Suppressed Evidence That Placed a Fourth Person, Kenneth Freeman, at the Crime Scene

Authors Michael Schiffmann ("Race Against Death: The Struggle for the Life and Freedom of Mumia Abu-Jamal," 2006), and J. Patrick O'Connor ("The Framing of Mumia Abu-Jamal," 2008) both argue that the actual shooter of Officer Faulkner was a man named Kenneth Freeman. Schiffmann and O'Connor argue that Freeman was an occupant of Billy Cook's car who shot Faulkner in response to Faulkner having shot Abu-Jamal first, and then fled the scene before police arrived.

Central to Schiffmann and O'Connor's argument was the presence of a driver's license application for one Arnold Howard, which was found in the front pocket of Officer Faulkner's shirt. Abu-Jamal's defense would not learn about this until 13 years later, because the police and DA's office had failed to notify them about the application's crucial location. Journalist Linn Washington argues that this failure was "a critical and deliberate omission" and "a major violation of fair trial rights and procedures. If the appeals process had any semblance of fairness, this misconduct alone should have won a new trial for Abu-Jamal."

More importantly, Washington says, "This evidence provides strong proof of a third person at the scene along with Faulkner and Billy Cook. The prosecution case against Abu-Jamal rests on the assertion that Faulkner encountered a lone Cook minutes before Abu-Jamal's arrival on the scene, but Faulkner got that application from somebody other than Cook, who had his own license."

At the 1995 PCRA hearing, Arnold Howard testified that he had loaned his temporary, non-photo license to Kenneth Freeman, who was Billy Cook's business partner and close friend. Further, Howard stated that police came to his house early in the morning on Dec. 9, 1981, and brought him to the police station for questioning because he was suspected of being "the person who had run away" from the scene, but he was released after producing a 4 a.m. receipt from a drugstore across town – which provided an alibi – and telling them that he had loaned the application to Freeman, who Howard reports was also at the police station that morning.

Also pointing to Freeman's presence in the car with Cook, O'Connor and Schiffmann cite prosecution witness Cynthia White's testimony at Cook's separate trial for charges of assaulting Faulkner, where White describes both a "driver" and a

"passenger" in Cook's VW. Also notable, investigative journalist Dave Lindorff's book ("Killing Time: An Investigation into the Death Row Case of Mumia Abu-Jamal," 2003) features an interview with Cook's lawyer, Daniel Alva, in which Alva says that Cook had confided to him within days of the shooting that Freeman had been with him that morning.

Linn Washington argues that "this third person at the crime scene is consistent with eyewitness accounts of the shooter fleeing the scene. Remember that accounts from both prosecution and defense witnesses confirm the existence of a fleeing shooter. Abu-Jamal was arrested at the scene, critically wounded. He did not run away and return in a matter of seconds." Eyewitnesses Robert Chobert, Dessie Hightower, Veronica Jones, Deborah Kordansky, William Singletary and Marcus Cannon all reported, at various times, that they saw one or more men run away from the scene.

O'Connor writes that "some of the eyewitnesses said this man had an Afro and wore a green army jacket. Freeman did have an Afro and he perpetually wore a green army jacket. Freeman was tall and burly, weighing about 225 pounds at the time." Then there's eyewitness Robert Harkins, whom prosecutor McGill did not call as a witness. O'Connor postulates that the prosecutor made that decision because Harkins' account of a struggle between Faulkner and the shooter that caused Faulkner to fall on his hands and knees before Faulkner was shot "demolished the version of the shooting that the state's other witnesses rendered at trial." O'Connor writes further that "Harkins described the shooter as a little taller and heavier than the 6-foot, 200-pound Faulkner," which excludes the 6-foot-1-inch, 170-pound Abu-Jamal.

Linn Washington's 2001 affidavit states that he knew Freeman to be a "close friend of Cook's" and that "Cook and Freeman were constantly together." Washington first met Freeman when Freeman reported his experience of police brutality to the Philadelphia Tribune, where Washington worked. Washington says today that "Kenny did not harbor any illusions about police being unquestioned heroes due to his experiences with being beaten a few times by police and police incessantly harassing him for his street vending."

Regarding the police harassment and intimidation of Freeman, which continued after the arrest of Abu-Jamal, Washington adds: "It is significant to note

that the night after the Faulkner shooting, the newsstand that Freeman built and operated at 16th and Chestnut Streets in Center City burned to the ground. In news media accounts of this arson, police sources openly boasted to reporters that the arsonist was probably a police officer. Witnesses claimed to see officers fleeing the scene right before the fire was noticed. Needless to say, that arson resulted in no arrests."

Dave Lindorff argues that the police clearly "had their eye on Freeman," because "only two months after Faulkner's shooting, Freeman was arrested in his home, where he was found hiding in his attic armed with a .22 caliber pistol, explosives and a supply of ammunition. At that time, he was not charged with anything." O'Connor and Schiffmann argue that police intimidation ultimately escalated to the point where police themselves murdered Freeman.

The morning of May 14, 1985, Freeman's body was found: naked, bound and with a drug needle in his arm. His cause of death was officially declared a "heart attack." The date of Freeman's death is significant because the night before his body was found, the police had orchestrated a military-style siege on the MOVE organization's West Philadelphia home. Police had fired over 10,000 rounds of ammunition in 90 minutes and used a State Police helicopter to drop a C-4 bomb – illegally supplied by the FBI – on MOVE's roof, which started a fire that destroyed the entire city block. The MOVE Commission later documented that police had shot at MOVE family members when they tried to escape the fire: In all, six adults and five children were killed.

As a local journalist, Abu-Jamal had criticized the city government's conflicts with MOVE and, after his 1981 arrest, MOVE began to publicly support him. Through this mutual advocacy, which continues today, Abu-Jamal and MOVE's contentious relationship with the Philadelphia authorities have always been closely linked. Seen in this context, Schiffmann argues that "if Freeman was indeed killed by cops, the killing probably was part of a general vendetta of the Philadelphia cops against their 'enemies' and the cops killed him because they knew or suspected he had something to do with the killing of Faulkner." O'Connor concurs, arguing that "the timing and modus operandi of the abduction and killing alone suggest an extreme act of police vengeance."

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**Online Petition to DA Larry Krasner**

Circuit Court's 2-1 ruling against Abu-Jamal's Batson claim was unfair, and he wrote that the ruling went "against the grain of our prior actions...I see no reason why we should not afford Abu-Jamal the courtesy of our precedents."

When, in 2009, the US Supreme Court then ruled against considering Mumia Abu-Jamal's appeal of the 2008 Third Circuit Court ruling, it effectively ended Abu-Jamal's Batson claim. However, upon

## Philadelphia DA's Office Suppresses Pedro Polakoff's Crime Scene Photos

On Dec. 6, 2008, several hundred protesters gathered outside the Philadelphia District Attorney's office, where Pam Africa, coordinator of the International Concerned Family and Friends of Mumia Abu-Jamal, spoke about the newly discovered crime scene photos taken by press photographer Pedro Polakoff. Africa cited Polakoff's statements today that he approached the DA's office with the photos in 1981, 1982 and 1995 but that the DA had completely ignored him.

Polakoff states that because he had believed Abu-Jamal was guilty, he had no interest in approaching the defense, and never did. Consequently, neither the 1982 jury nor the defense ever saw Polakoff's photos. "The DA deliberately kept evidence out," declared Africa. "Someone should be arrested for withholding evidence in a murder trial."

Advocacy groups called Educators for Mumia and Journalists for Mumia explain in their 2007 fact sheet, "21 FAQs," that Polakoff's photos were first discovered by German author Michael Schiffmann in May 2006 and published that fall in his book, "Race Against Death." One of Polakoff's photos was first published in the U.S. by the San Francisco Bay View newspaper on Oct. 24, 2007.

Reuters followed with a Dec. 4, 2007, article, after which the photos made their television debut on NBC's Dec. 6, 2007 Today Show. They have since been spotlighted by National Public Radio, Indymedia.org, Counterpunch, The Philadelphia

inspecting the contents of the six file boxes that you thankfully handed over to the defense as the law required, Abu-Jamal's defense team found two major pieces of evidence. The first, a handwritten letter to assistant district attorney Joe McGill penned by Robert Chobert, a key prosecution witness. In the letter, Mr. Chobert asks for his money—which suggests Mr. Chobert's testimony against Mumia may have been bribed. The boxes also reveal other handwritten notes on original files, closely tracking the race of jurors. These notes are new evidence of racial discrimination in Joseph McGill's selection of the 1982 trial jury. And, as a result, the Batson issue

Weekly and the 2009 documentary *Justice On Trial* which features an interview with Polakoff.

Beginning in May, 2007, www.Abu-Jamal-News.com displayed four of Polakoff's photos, making the following key points:

**Photo 1: Mishandling the Guns** – Officer James Forbes holds both Abu-Jamal's and Faulkner's guns in his bare hand and touches the metal parts. This contradicts his later court testimony that he had preserved the ballistics evidence by not touching the metal parts.

**Photos 2 and 3: The Moving Hat** – Faulkner's hat is moved from the top of Billy Cook's VW and placed on the sidewalk for the official police photo.

**Photo 4: The Missing Taxi** – Prosecution witness Robert Chobert testified that he was parked directly behind Faulkner's car, but the space is empty in the photo.

**The Missing Divots** – In all of Polakoff's photos of the sidewalk where Faulkner was found, there are no large bullet divots, or destroyed chunks of cement, which should be visible in the pavement if the prosecution scenario was accurate. According to that account, Abu-Jamal shot down at Faulkner – and allegedly missed several times – while Faulkner was on his back. Also, citing the official police photo, Michael Schiffmann writes: "It is thus no question any more whether the scenario presented by the prosecution at Abu-Jamal's trial is true, because it is

is now up for reassessment and review.

When the Third Circuit majority ruled against Mumia Abu-Jamal's Batson claim in 2008, it ignored irrefutable evidence that Abu-Jamal's defense had been blocked from introducing the very evidence that the Third Circuit majority faulted the defense for not introducing. During the 1995 PCRA proceedings, Judge Albert F. Sabo (the original 1982 trial judge) literally had Abu-Jamal's lawyer arrested for trying to subpoena clerks from the Pennsylvania and Philadelphia court systems as part of the de-

*Continued on page 16...*

physically impossible."

Pedro P. Polakoff was a Philadelphia freelance photographer who reports having arrived at the crime scene about 12 minutes after the shooting was first reported on police radio and at least 10 minutes before the arrival of the Mobile Crime Detection Unit that handles crime scene forensics and photographs. In Schiffmann's interview with him, Polakoff recounted that "all the officers present expressed the firm conviction that Abu-Jamal had been the passenger in Billy Cook's VW and had fired and killed Faulkner by a single shot fired from the passenger seat of the car." Polakoff bases this on police statements made to him directly and from his having overheard their conversations.

Polakoff states that this early police opinion was apparently the result of their interviews of three other witnesses who were still present at the crime scene: a parking lot attendant, a drug-addicted woman and another woman. None of those eyewitnesses, however, have appeared in any report presented to the courts by the police or the prosecution.

It is undisputed that Abu-Jamal approached from across the street and was not the passenger in Billy Cook's car. Schiffmann argues that Polakoff's personal account strengthens the argument that the actual shooter was Billy Cook's passenger Kenneth Freeman, who, Schiffmann postulates, fled the scene before police arrived.

## Judge Albert Sabo Blocks Testimony From Police Officer Gary Wakshul

On the final day of testimony during the original trial, Abu-Jamal's lawyer discovered Police Officer Gary Wakshul's official statement in the police report from the morning of Dec. 9, 1981. After riding with Abu-Jamal to the hospital and guarding him until treatment for his gunshot wound, Wakshul reported: "The negro male made no comment." This statement contradicted the trial testimony of prosecution witnesses Gary Bell, a police officer, and Priscilla Durham, a hospital security guard, who testified that they had heard Abu-Jamal confess to the shooting while Abu-Jamal was awaiting treatment at the hospital.

When the defense immediately sought to call Wakshul as a witness, the DA reported that he was on vacation. Judge Sabo denied the defense request to locate him for testimony, on grounds that it was too late in the trial to even take a short recess so that the defense could attempt to locate Wakshul. Consequently, the jury never heard from Wakshul, nor about his contradictory written report. When an outraged Abu-Jamal protested, Judge Sabo replied: "You and your attorney goofed."

Wakshul's report from Dec. 9, 1981, is just one of the many reasons cited by Amnesty International for their conclusion that Bell's and Durham's trial testimonies were not credible. There are many other problems that merit a closer look if we are to determine how important Wakshul's 1982 trial testimony could have been.

The alleged "hospital confession," in which Abu-Jamal reportedly shouted, "I shot the motherf\*\*er and I hope he dies," was first officially reported to police over two months after the shooting, by hospital guards Priscilla Durham and James LeGrand on Feb. 9, 1982, by Police Officer Gary Wakshul on Feb. 11, by Officer Gary Bell on Feb. 25, and by Officer Thomas M. Bray on March 1. Of these five, only Bell and Durham were called as prosecution witnesses.

When Durham testified at the trial, she added something new to her story which she had not reported to the police on Feb. 9. She now claimed that she had reported the confession to her supervisor the next day, on Dec. 10, making a handwritten report. Neither her supervisor nor the alleged handwritten statement was ever presented in court. Instead, the DA sent an officer to the hospital, returning with a suspicious typed version of the alleged Dec. 10 report. Sabo accepted the unsigned and unauthenticated paper despite both Durham's disavowal – because it was typed and not handwritten – and the defense's protest that its authorship and authenticity were unproven.

Gary Bell, Faulkner's partner and self-described "best friend," testified that his two month memory lapse had resulted from his having been so upset over Faulkner's death that he had forgotten to report it to police.

Later, at the 1995 PCRA hearings, Wakshul testified that both his contradictory report made on Dec. 9, 1981 – "The negro male made no comment" – and the two month delay were simply bad mistakes. He repeated his earlier statement given to police on Feb. 11, 1982, that he "didn't realize it [Abu-Jamal's alleged confession] had any importance until that day." Contradicting the DA's assertion of Wakshul's unavailability in 1982, Wakshul also testified in 1995 that he had in fact been home for his 1982 vacation and available for trial testimony, in accordance with explicit instructions to stay in town for the trial so that he could testify if called.

Just days before his PCRA testimony, undercover police officers savagely beat Wakshul in front of a sitting judge in the Common Pleas Courtroom where Wakshul worked as a court crier. The two attackers, Kenneth Fleming and Jean Langen, were later suspended without pay as punishment. With the motive still unexplained, Dave Lindorff and J. Patrick O'Connor speculate that the beating may have been used to intimidate Wakshul into maintaining his "confession" story at the PCRA hearings.

Regarding Abu-Jamal's alleged confession, Amnesty International concluded: "The likelihood of two police officers and a security guard forgetting or neglecting to report the confession of a suspect in the killing of another police officer for more than two months strains credulity."

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**Online Petition to DA Larry Krasner**

fense's PCRA petition argument that jury pools were not drawn "from a fair cross section of the community." Outrageously, in 2008, when the Third Circuit Court ruled against Abu-Jamal's Batson claim, the Court actually justified the denial by citing the absence of this very data that his lawyer had been arrested in court for trying to obtain.

Entire books have meticulously detailed the injustice throughout Mumia Abu-Jamal's case, such as those by authors Dave Lindorff (*Killing Time*, 2003), Michael Schiffmann (*Race Against Death*, 2006), and J. Patrick O'Connor (*The Framing of Mumia Abu-Jamal*, 2008). Veteran journalist Linn Washington, Jr. has been writing newspaper columns and articles about the Abu-Jamal case since it began on December 9, 1981 with the shooting death of Philadelphia Police Officer Daniel Faulkner and

the near-fatal shooting of Abu-Jamal. Hence, the evidence of Abu-Jamal's unfair trial is abundant and quite accessible to anyone who reads the work by any of these four writers.

In 2010, investigative journalists Dave Lindorff and Linn Washington performed a test to see whether bullets fired into the sidewalk at close range would leave visible markings. The test was designed to replicate the shooting scenario presented at Mumia Abu-Jamal's 1982 trial by ADA Joseph McGill, alleging that Abu-Jamal stood directly over Officer Faulkner and fired downwards at him, execution style. According to McGill's theory, Abu-Jamal missed several times because Faulkner actively dodged the shots by rolling side-to-side, until the final shot entered Faulkner's forehead and killed him.

Lindorff and Washington sought to test a central argument of German author Michael Schiffmann's 2006 book *Race Against Death*, written as his PhD

dissertation at the University of Heidelberg. Dr. Schiffmann examined the crime scene photos, including those taken by freelance photographer Pedro Polakoff, and concluded that there were no visible divots or markings in the pavement, which Schiffmann asserted should have been visible if the testimonies of key prosecution eyewitnesses Robert Chobert and Cynthia White had been accurate.

In 2010, Lindorff and Washington tested Schiffmann's assertion by firing a .38 caliber revolver several times into a concrete slab. They then closely analyzed the bullet marks left in the concrete slab. They concluded, without any ambiguity, that the bullets had indeed left visible markings. Therefore, if ADA McGill's theory (supported by Robert Chobert and Cynthia White's trial testimony) was truthful, there must have been similar bullet markings in the pavement next to where Officer Daniel Faulkner's body was found.

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## **How Police Investigators, ADA Joseph McGill, and Judge Albert Sabo Attempted But Failed To Silence Defense Eyewitness Veronica Jones**

Veronica Jones was working as a sex worker at the crime scene on Dec. 9, 1981. She first told police on Dec. 15, 1981, that she had seen two men "jogging" away from the scene before police arrived.

As a defense witness at the 1982 trial, Jones denied having made that statement; however, later in her testimony she started to describe a pre-trial visit from police: "They were getting on me telling me I was in the area and I seen Mumia, you know, do it. They were trying to get me to say something that the other girl [Cynthia White] said. I couldn't do that." Jones then testified that police had offered to let her and White "work the area if we tell them" what they wanted to hear regarding Abu-Jamal's guilt.

At this point, prosecutor McGill interrupted Jones and moved to block her account, calling her testimony "absolutely irrelevant." Judge Sabo agreed to block the line of questioning and strike the testimony and then ordered the jury to disregard Jones' statement.

The DA and Sabo's efforts to silence Jones continued through to the later PCRA hearings that started in 1995. Having been unable to locate Jones earlier, the defense found Jones in 1996, and, over the DA's protests, obtained permission from the Pennsylvania Supreme Court to extend the PCRA hearings for Jones' testimony. Sabo vehemently resisted – arguing that there was not sufficient proof of her unavailability in 1995. However, in 1995, Sabo had refused to order disclosure of Jones' home address to the defense team.

Over Sabo's objections, the defense returned to the PA Supreme Court, which ordered Sabo to conduct a full evidentiary hearing. Sabo's attempts to silence Jones continued as she took the stand. He immediately threatened her with five-10 years imprisonment if she testified to having perjured herself in 1982. In defiance, Jones persisted with her testimony that she had in fact lied in 1982, when she had denied her original account to police that she had seen two men "leave the scene."

Jones testified that she had changed her version of events after being visited by two detectives in prison, where she was being held on charges of robbery and assault. Urging her to both finger Abu-Jamal as the shooter and to retract her statement about seeing two men "run away," the detectives stressed that she faced up to 10 years in prison and the loss of her children if convicted. Jones testified in 1996 that in 1982, afraid of losing her children, she had decided to meet the police halfway: She did not actually finger Abu-Jamal, but she did lie about not seeing two

men running from the scene. Accordingly, following the 1982 trial, Jones only received probation and was never imprisoned for the charges against her.

During the 1996 cross-examination, the DA announced that there was an outstanding arrest warrant for Jones on charges of writing a bad check and that she would be arrested after concluding her testimony. With tears pouring down her face, Jones declared: "This is not going to change my testimony!" Despite objections from the defense, Sabo allowed New Jersey police to handcuff and arrest Jones in the courtroom.

While the DA attempted to use this arrest to discredit Jones, her determination in the face of intimidation may, arguably, have made her testimony more credible. Outraged by Jones' treatment, even the Philadelphia Daily News, certainly no fan of Abu-Jamal, reported: "Such heavy-handed tactics can only confirm suspicions that the court is incapable of giving Abu-Jamal a fair hearing. Sabo has long since abandoned any pretense of fairness."

Jones' account was given further credibility a year later. At the 1997 PCRA hearing, former sex worker Pamela Jenkins testified that police had tried pressuring her to falsely testify that she saw Abu-Jamal shoot Faulkner. In addition, Jenkins testified that in late 1981, Cynthia White – whom Jenkins knew as a fellow police informant – told Jenkins that she was also being pressured to testify against Abu-Jamal and that she was afraid for her life.

As part of a 1995 federal probe of Philadelphia police corruption, Officers Thomas F. Ryan and John D. Baird were convicted of paying Jenkins to falsely testify that she had bought drugs from a Temple University student. Jenkins' 1995 testimony in this probe helped to convict Ryan, Baird and other officers and also to dismiss several dozen drug convictions. At the 1997 PCRA hearing, Jenkins testified that this same Thomas F. Ryan was one of the officers who attempted to have her lie about Abu-Jamal.

More recently, a 2002 affidavit by former sex worker Yvette Williams described police coercion of Cynthia White. The affidavit reads: "I was in jail with Cynthia White in December of 1981 after Police Officer Daniel Faulkner was shot and killed. Cynthia White told me the police were making her lie and say she saw Mr. Jamal shoot Officer Faulkner when she really did not see who did it ... Whenever she talked about testifying against Mumia Abu-Jamal, and how the police were making her lie, she was nervous and very excited and I could tell how

scared she was from the way she was talking and crying."

Explaining why she is just now coming out with her affidavit, Williams says: "I feel like I've almost had a nervous breakdown over keeping quiet about this all these years. I didn't say anything because I was afraid. I was afraid of the police. They're dangerous." Williams' affidavit was rejected by Philadelphia Judge Pamela Dembe in 2005, the Pennsylvania Supreme Court in February 2008 and, in October 2008, by the U.S. Supreme Court.

Further supporting the contention that police had made a deal with White, author J. Patrick O'Connor writes: "Prior to her becoming a prosecution witness in Abu-Jamal's case, White had been arrested 38 times for prostitution ... After she gave her third statement to the police, on December 17, 1981, she would not be arrested for prostitution in Philadelphia ever again even though she admitted at Billy Cook's trial that she continued to be 'actively working.'"

Amnesty International reports that later, in 1987, White was facing charges of armed robbery, aggravated assault and possession of illegal weapons. A judge granted White the right to sign her own bail and she was released after a special request was made by Philadelphia Police Officer Douglas Culbreth – where Culbreth cited her involvement in Abu-Jamal's trial. After White's release, she skipped bail and has never, officially, been seen again.

At the 1997 PCRA hearing, the DA announced that Cynthia White was dead, and presented a death certificate for a "Cynthia Williams," who died in New Jersey in 1992. However, Amnesty International reports, "an examination of the fingerprint records of White and Williams showed no match and the evidence that White is dead is far from conclusive."

Journalist C. Clark Kissinger writes, a Philadelphia police detective "testified that the FBI had 'authenticated' that Williams had the same fingerprints as White." However, Kissinger continues, "the DA's office refused to produce the actual fingerprints," and "the body of Williams was cremated so that no one could ever check the facts! Finally, the Ruth Ray listed on the death certificate as the mother of the deceased Cynthia Williams has given a sworn statement to the defense that she is not the mother of either Cynthia White or Cynthia Williams."

Dave Lindorff reports further that the listing of deaths by social security number for 1992 and later years does not include White's number.



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**Online Petition to DA Krasner**

For their 2010 test, Lindorff and Washington also examined the 1981 Abu-Jamal / Faulkner crime scene photos taken by Pedro Polakoff, scrutinizing the exact area of the sidewalk pavement where Faulkner's body was found. Lindorff and Washington had one of Polakoff's 1981 photos and a 2010 gun test photo compared & analyzed by a NASA photo analyst named Robert Nelson. They concluded definitively that the 1981 photo did not show any markings similar to what was visible in the 2010 photo, meaning that "the whole prosecution story of an execution-style slaying of the officer by Abu-Jamal would appear to be a prosecution fabrication, complete with coached, perjured witnesses, undermining the integrity and fairness of the entire trial."

Before publishing their findings, Dave Lindorff and Linn Washington informed the Philadelphia DA's office about the results of their test, and specifically asked the DA for a quote to explain the lack

of photographic evidence or testimony about bullet impact marks in the sidewalk around Faulkner's body. The DA's office responded to their questions with what Lindorff and Washington considered to be "a non-response." All the DA's office told them was: "The murderer has been represented over the past twenty plus years by a multitude of lawyers, many of whom have closely reviewed the evidence for the sole purpose of finding some basis to overturn the conviction. As you know, none has succeeded, and Mr. Abu-Jamal remains what the evidence proved – a murderer."

Unfortunately, there is even more in this story that reflects poorly upon the Philadelphia District Attorney's office. Freelance photographer Pedro Polakoff told Dr. Michael Schiffmann in *Race Against Death*, that he approached the DA's office with his photos in 1981, 1982 and 1995 but that the DA completely ignored him. Polakoff also told Schiffmann that because he had believed Mumia Abu-Jamal was guilty, he had no interest in approaching the defense, and never did. Furthermore, the DA never informed Abu

-Jamal's defense team about the existence of Polakoff's photos, as they are required by law to do.

Consequently, neither the 1982 jury nor Abu-Jamal's defense ever saw Pedro Polakoff's photos. "The DA deliberately kept evidence out," declared Pam Africa, representing The International Concerned Family and Friends of Mumia Abu-Jamal at a Dec. 6, 2008 protest outside the Philadelphia DA's office. "Someone should be arrested for withholding evidence in a murder trial," said Africa.

Mr. Krasner, we have presented sufficient evidence to explain why we believe that police, prosecutorial, and judicial misconduct has forever destroyed the legitimacy of Mumia Abu-Jamal's 1982 conviction. We urge you in the strongest possible terms to stop defending Mumia Abu-Jamal's conviction. Please secure his release as soon as you possibly can. Ending the persecution of Abu-Jamal upholds the sworn duty of the District Attorney to obey the Constitution, that document that is supposed to ensure justice for all.



PHOTO: Free Mumia protest outside the Philadelphia District Attorney's Office on January 31, 2020. Photo by Jamal Journal staff photographer Joe Piette.

## Judge Albert Sabo Prevented the 1982 Jury From Knowing Prosecution Eyewitness Robert Chobert's Probation Status

At prosecutor Joseph McGill's request, Judge Albert Sabo blocked Abu-Jamal's defense from telling the 1982 jury that key prosecution eyewitness, taxi driver Robert Chobert, was on probation for throwing a molotov cocktail into a school yard, for pay.

Judge Sabo justified this by ruling that Chobert's offense was not *crimen falsi*, i.e., a crime of deception. Consequently, the jury never heard about this, nor that on the night of Abu-Jamal's arrest, Chobert had been illegally driving on a suspended license (revoked for a DWI). This probation violation could have given him up to 30 years in prison, so he was extremely vulnerable to pressure from the police.

Notably, at the later 1995 PCRA hearing, Chobert testified that his probation had never been revoked, even though he continued to drive his taxi illegally through 1995.

At the 1982 trial, Chobert testified that he was in his taxi, which he had parked directly behind Faulkner's police car, and was writing in his log book when he heard the first gunshot and looked up. Chobert alleged that while he did not see a gun in Abu-Jamal's hand, nor a muzzle flash, he did see Abu-Jamal standing over Faulkner, saw Abu-Jamal's hand "jerk back" several times, and heard shots after each "jerk." After the shooting, Chobert stated that he got out and approached the scene.

Damaging Chobert's credibility, however, is evidence suggesting that Chobert may have lied about

his location at the time of Faulkner's death. As displayed on page 37, the newly discovered Polakoff crime scene photos show that the space where Chobert testified to being parked directly behind Officer Faulkner's car was actually empty.

Yet even more evidence suggests he lied about his location. While prosecution eyewitness Cynthia White is the only witness to testify seeing Chobert's taxi parked behind Faulkner's police car, no official eyewitness reported seeing White at the scene. Furthermore, Chobert's taxi is missing both from White's first sketch of the crime scene given to police (Defense Exhibit D-12) and from a later one (Prosecution Exhibit C-35).

In a 2001 affidavit, private investigator George Michael Newman says that in a 1995 interview, Chobert told Newman that Chobert was actually parked around the corner, on 13th Street, north of Locust Street, and did not even see the shooting.

Amnesty International documents that both Chobert and White "altered their descriptions of what they saw, in ways that supported the prosecution's version of events." Chobert first told police that the shooter simply "ran away," but after he had identified Abu-Jamal at the scene, he said the shooter had run away 30 to 35 "steps" before he was caught. At trial, Chobert changed this distance to 10 "feet," which was closer to the official police account that Abu-Jamal was found just a few feet away from Officer Faulkner.

Nevertheless, Chobert did stick to a few statements in his trial testimony that contradicted the prosecution's scenario. For example, Chobert declared that he did not see the apparently unrelated Ford car that, according to official reports, was parked in front of Billy Cook's VW. Chobert also claimed that the altercation happened behind Cook's VW (it officially happened in front of Cook's VW), that Chobert did not see Abu-Jamal get shot or see Officer Faulkner fire his gun, and that the shooter was "heavyset" – estimating 200-225 pounds. Abu-Jamal weighed 170 pounds.

In his 2003 book, "Killing Time," Dave Lindorff wrote about two other problems with Chobert's account. While being so legally vulnerable, why would Chobert have parked directly behind a police car? Why would he have left his car and approached the scene if in fact the shooter were still there? Lindorff suggests that "at the time of the incident, Chobert might not have thought that the man slumped on the curb was the shooter," because "in his initial Dec. 9 statement to police investigators, Chobert had said that he saw 'another man' who 'ran away' ... He claimed in his statement that police stopped that man, but that he didn't see him later."

Therefore, "if Chobert did think he saw the shooter run away, it might well explain why he would have felt safe walking up to the scene of the shooting as he said he did, before the arrival of police," writes author Dave Lindorff.

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### **Pam Africa's Message to the Movement**

Furthermore, we are glad that DA Krasner gave the six previously undisclosed file boxes to Mumia's defense team. This is important evidence that should have been disclosed by previous DAs.

However, it is completely unacceptable that he continues to defend Mumia's 1982 conviction. If DA Krasner wants to embrace anti-racist principles, if he sincerely believes in confronting the ugly legacy of institutionalized white supremacy that continues to infest Philadelphia's 'criminal justice system,' then he needs to take an honest look at the facts of Mumia's case. With our petition, we are presenting DA Krasner with an opportunity to do the right thing.

With our petition and newspaper, we are presenting the facts of the case to DA Krasner in a clear and accessible way. The petition presents a short summary, while our 40-page newspaper provides even more documentation of the injustice in Mumia's case. Therefore, DA Krasner can no longer ignore what we are saying, and he can no longer claim that he has not been presented with our evidence of police, prosecutorial, and judicial misconduct.

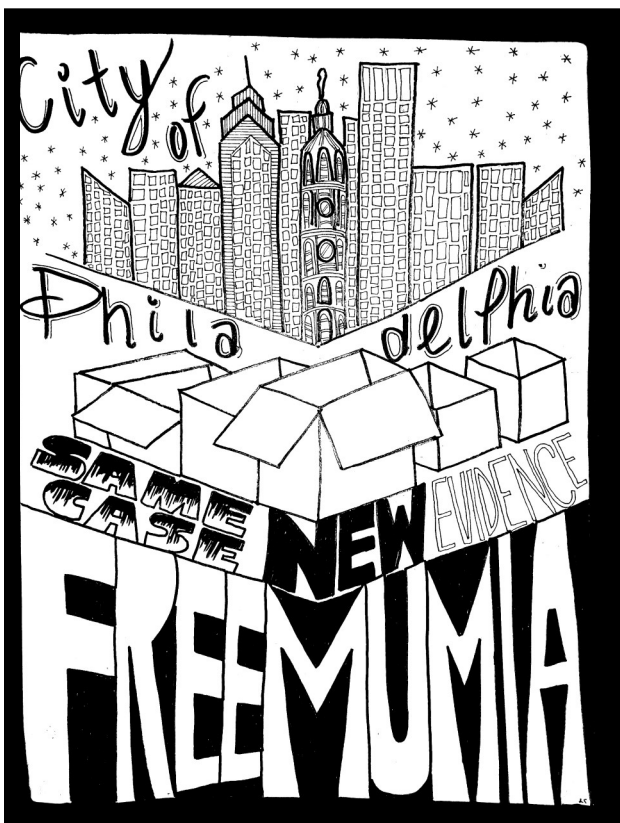
### **The Evidence in the Petition**

The well-documented misconduct in Mumia's case is so bad and so extensive that it has forever destroyed the prosecutor's case. The facts speak for themselves, and we are confident that an honest investigation of Mumia's case will show this to be true.

Our petition summarizes key facts in regards to the Batson issue, about the use of peremptory strikes to remove otherwise qualified Black potential jurors. Judge Albert Sabo's despicable behavior at the 1982 trial and later at the 1995-97 PCRA Hearings is another focus of the petition. There is also the fact that the DA suppressed Pedro Polakoff's crime scene photos.

The conclusion of our petition cites the results of a test performed in 2010 by Philadelphia journalists Linn Washington and Dave Lindorff. They sent a crime scene photo by Pedro Polakoff to NASA photo analyst Robert Nelson, asking him to look for any markings from the bullets that Mumia was accused of shooting downwards at Officer Faulkner.

Washington and Lindorff also sent Robert Nelson a photo of a concrete slab that they shot a .38 revolver into, which displayed clear markings where the bullets made contact. After applying the same technology used to analyze photographs taken in outer space, the NASA analyst couldn't find anything in the crime scene photo that resembled the bullet marks visible on the concrete slab.



Artwork by Jihan Thomas shows six previously undisclosed file boxes from the DA's office.

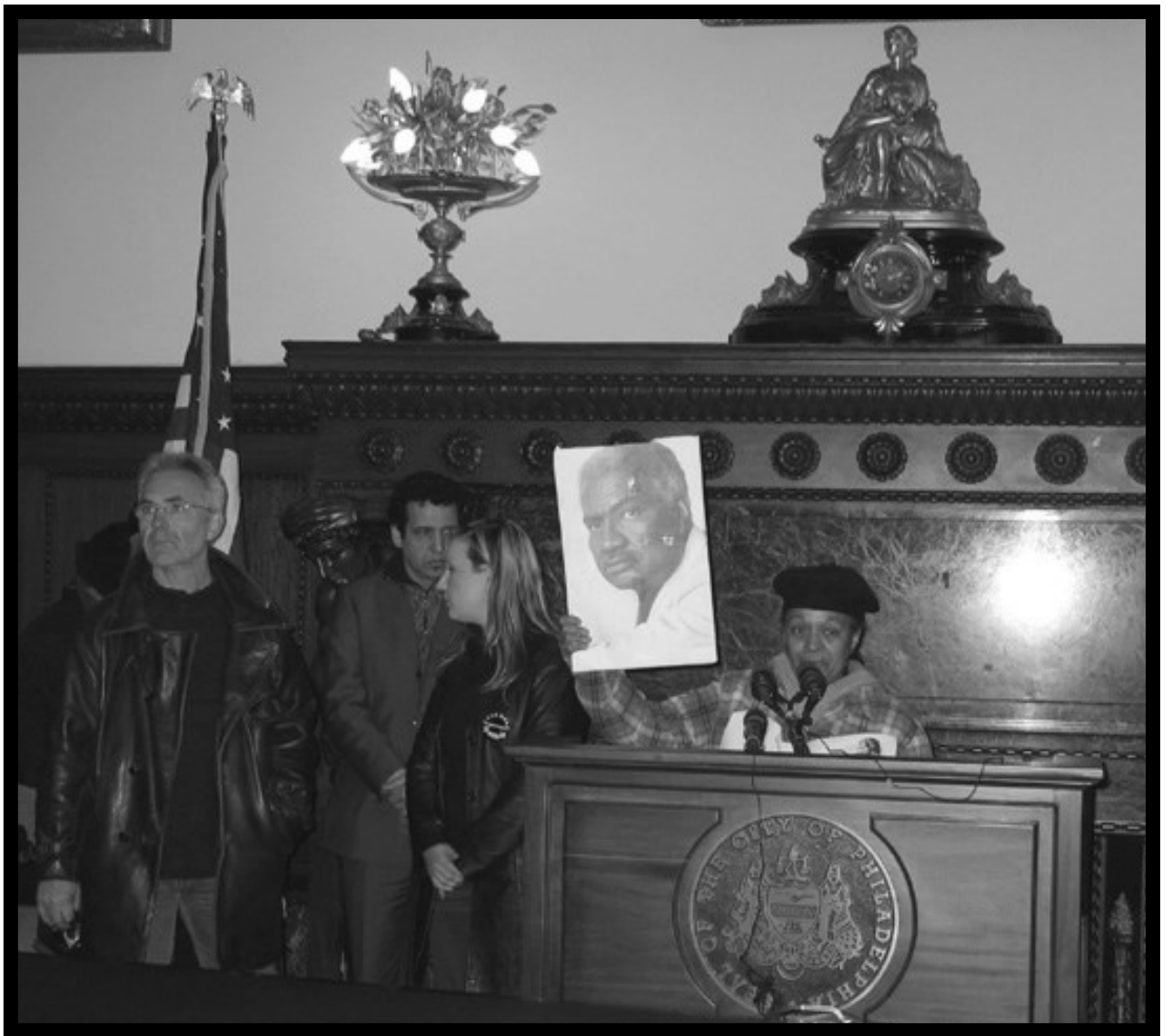


PHOTO: In 2005, French supporters of Mumia traveled from France in an attempt to meet with Philadelphia Mayor John Street. The French delegation was received by an assistant for Mayor Street and given miniature Liberty Bells as a gift. While inside the Mayor's reception room, Pam Africa and the French delegates took to the podium to speak about Mumia. Pam is holding a photo of the late Mumia supporter Ossie Davis. Photo by AWOL Magazine / Philly IMC

Washington and Lindorff concluded that "the whole prosecution story of an execution-style slaying of the officer by Abu-Jamal would appear to be a prosecution fabrication, complete with coached, perjured witnesses, undermining the integrity and fairness of the entire trial."

Let me repeat that: Here is physical evidence that completely disproves the prosecution theory used to convict Mumia. This also proves that prosecution eyewitnesses Robert Chobert and Cynthia White's testimony was a lie. We concluded our petition by citing Washington and Lindorff's test because this is such powerful evidence for exposing the frameup. DA Krasner must not ignore this!

### **Our Demands**

ICFFMAJ has always called for Mumia's immediate release because we believe he is innocent and that he should never have been imprisoned in the first place.

At the same time, ICFFMAJ has always worked alongside anyone supporting a new trial, and we will continue to do this.

But after 39 years in prison, Mumia is now an elder in poor health, and every day counts. Therefore, if Mumia's conviction is overturned because of the well-documented police, prosecutorial, and judicial misconduct, Krasner should accept the overturned conviction and not retry him.

Maureen Faulkner and the FOP have seen the writing on the walls and they know that Mumia will eventually be released. In fact, Maureen Faulkner recently told journalist Noelle Hanrahan that she believes Mumia will be released if he can get a new trial. Of course, that is why they have been trying to drag out Mumia's appeal process however they can, with the King's Bench Appeal being the most recent example. After losing the election, Donald Trump filed frivolous lawsuits without any evidence in order to delay his inevitable defeat. Similarly, the Kings Bench Appeal was meant to delay Mumia's inevitable release from prison.

Like Mayor Frank Rizzo before him, Donald Trump's outrageous public advocacy of police violence has fueled grassroots movements like Black

Lives Matter, creating a new generation of activists. This new generation will no longer accept overt displays of white supremacist values, like those represented by the Rizzo statue across from City Hall and the Rizzo mural in South Philadelphia's Italian Market. Thankfully, these have both been removed from the City.

Confronting Frank Rizzo's horrifying legacy is a good first step. Now the City of Philadelphia needs to deal with the legacy of Judge Albert Sabo, known as a "prosecutor in robes," a hardcore racist who was also notorious for his extreme judicial bias in cases other than Mumia's. We do not want the appeals process to continue dragging on when there is already so much public information about the injustice in Mumia's case. Delaying Mumia's release will only make the injustice worse.

DA Krasner now must decide which side of history he wants to be on. He has a choice.

### **The New Krasner Brief**

As you can see from our petition, we are seeking to approach Larry Krasner diplomatically. In our effort to attract the widest possible range of support, we have written the petition with polite language. We are trying to give DA Krasner the benefit of the doubt, by considering the possibility that he is sincere in his stated desire to confront Philadelphia's ugly history of extreme racial injustice.

For Mumia's sake, we truly hope that DA Krasner's defense of Mumia's conviction is because he has not actually researched the case himself, and that his stance is simply a product of the Philadelphia corporate media's well-documented bias against Mumia. We are sincerely presenting him with an opportunity to rethink his position and to do the right thing. We hope that he listens.

Despite our optimism, on Feb. 3, Philadelphia District Attorney Larry Krasner filed a new brief in Mumia's case, where he continued to defend the legitimacy of Mumia's 1982 conviction. DA Krasner's several years of opposing Mumia's appeals has already been vile and disgusting. However, with

*Continued on page 19...*



...Continued from page 18:  
**Pam's Message to the Movement**

this new brief, he somehow manages to stoop even lower.

There is much to criticize about DA Krasner's Feb. 3 brief, but one particular aspect really stood out for me. On page five, in the section titled "Statement of Facts," the brief states:

*"Officer Faulkner was put in a police van and rushed to Jefferson University Hospital. When the police attempted to handcuff defendant and place him in a police wagon to transport him to the hospital, he violently resisted. He continued to struggle against the officers when they subsequently brought him inside the hospital, the same one in which doctors were attempting to save Officer Faulkner's life. The officers carrying defendant—he refused to walk—temporarily placed him on the floor of the lobby next to the entrance to the emergency room."*

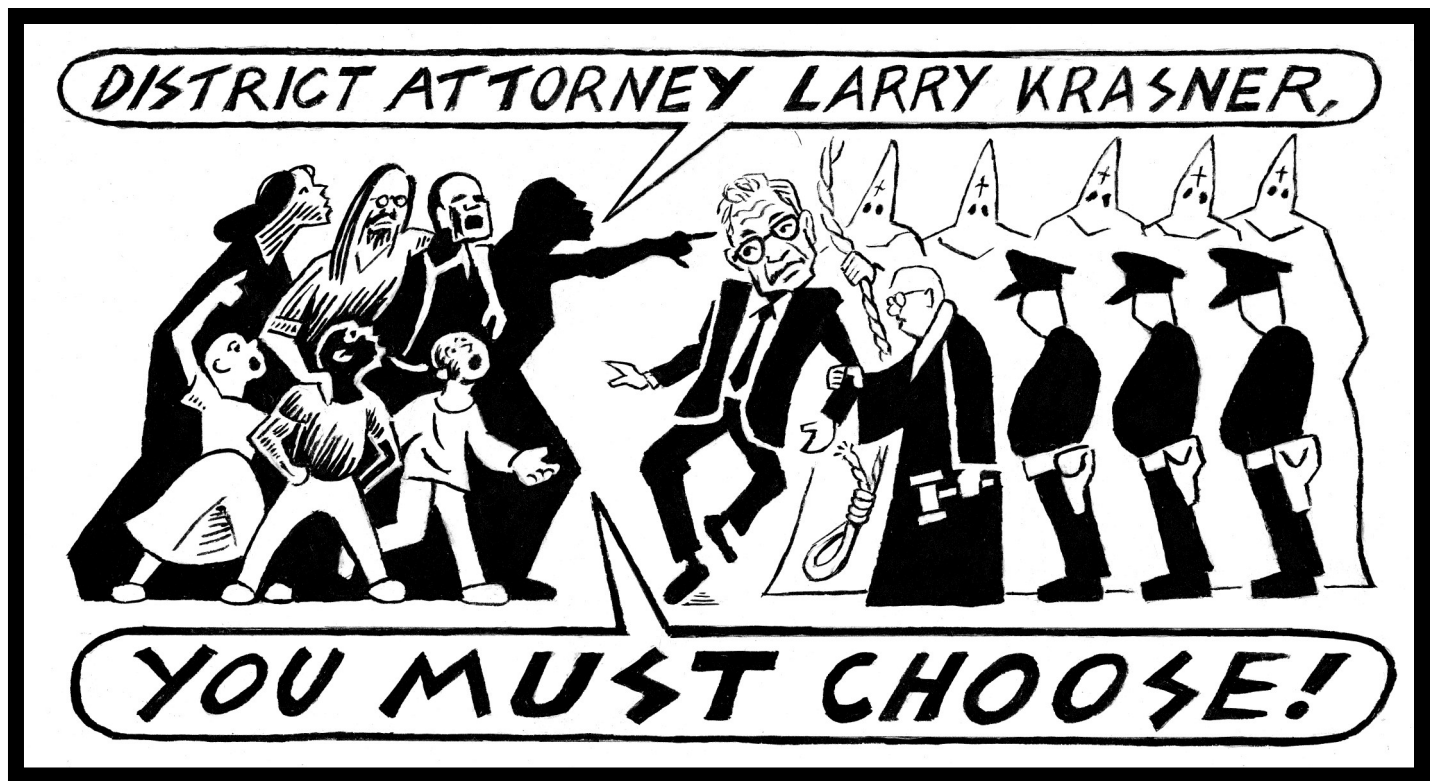
**Does DA Krasner Oppose Lynchings?**

Has DA Krasner actually read the trial transcripts? If so, does he realize the implications of him describing Mumia's arrest in such a despicable way?

What actually happened that morning when police arrived on the scene was an attempted lynching of Mumia, with the police acting as the white supremacist lynch mob.

Before even speaking with a single eyewitness, the mob of cops brutalized Mumia so viciously that when his sister Lydia arrived at the hospital she could not even recognize him. Make no mistake, the cops wanted him to die from the gunshot wound before receiving medical treatment, ultimately taking 30 minutes, or more, to begin treatment at the hospital. This was an obvious attempt to execute him before even conducting an investigation, let alone a fair trial.

Has DA Krasner read the trial testimony of defense witness Dessie Hightower who reported seeing someone flee the crime scene immediately after the shooting? At trial, Hightower described Mumia's arrest as being "an attack" by the police. In his book



This anti-lynching cartoon by anti-racist activist Seth Tobocman depicts Philadelphia District Attorney Larry Krasner with a choice to make. The white supremacist FOP-led lynch mob wants DA Krasner to help them kill Mumia, while Mumia's family and friends call on DA Krasner to stand up to the FOP-led lynch mob.

"The Framing of Mumia Abu-Jamal," J. Patrick O'Connor summarizes Hightower's trial testimony:

*"He said that shortly after the first police officer showed up, about eight or nine other officers arrived. He then observed three or four of them striking Abu-Jamal with nightsticks while one or two others were kicking him and pulling him by his dreadlocks. He also saw the police, in carrying Abu-Jamal to the police van, ram his head into a no-parking pole and drop him to the ground."*

Has DA Krasner read the trial testimony of Dr. Regina Cudemo, who was working at the hospital when Mumia arrived? If not, author J. Patrick O'Connor has also summarized her account:

*"She testified that she saw Abu-Jamal at about 4:20 AM on the floor, 'on what I call the treadles of the emergency room'—the mats outside the emergency room doors. She said four to six police were around Abu-Jamal...she saw one of the police officers around Abu-Jamal raise his leg and then heard Abu-Jamal 'moan.' After observing this incident, she said she was directed by another police officer to leave the area."*

O'Connor also writes that after Mumia was dropped on the floor of the entryway to the emergency room, "instead of taking Abu-Jamal to an operating room, hospital security guard Priscilla Durham had the police drag him to the family room." Only after this, "Abu-Jamal was brought handcuffed to the emergency room for surgery."

Does DA Krasner think that an attempted police lynching of a prominent award-winning Black journalist, loving father, and respected community activist is some kind of joke?

If he has read the trial testimony of Dessie Hightower and Dr. Regina Cudemo, why is he not concerned about Mumia's treatment by police that morning?

Lastly, how could he possibly write such an offensive description of Mumia's treatment by police, like claiming that Mumia "refused to walk" into the hospital after he had been shot in the chest and nearly beaten to death?

We need answers from DA Krasner.

Please sign our petition!



PHOTO: Pam Africa leads a march past City Hall on the Fourth of July 2002. Photo by AWOL Magazine / Philadelphia Independent Media Center.





# DISTRICT ATTORNEY LARRY KRASNER!



YOU KNOW THAT

A STATUE OF FRANK RIZZO, FORMER MAYOR OF PHILADELPHIA, HAS BEEN PULLED DOWN.

WE CALL ON YOU TO HELP US REMOVE ANOTHER MONUMENT TO **RACISM:**

END THE 39-YEAR IMPRISONMENT

OF MUMIA-ABU-JAMAL.

A WORKING CLASS INTELLECTUAL WHO GREW UP IN THE PROJECTS, TAXI

MUMIA WAS DRIVING A CAB

ON THE NIGHT OF HIS ARREST.

LIKE MANY BLACK MEN

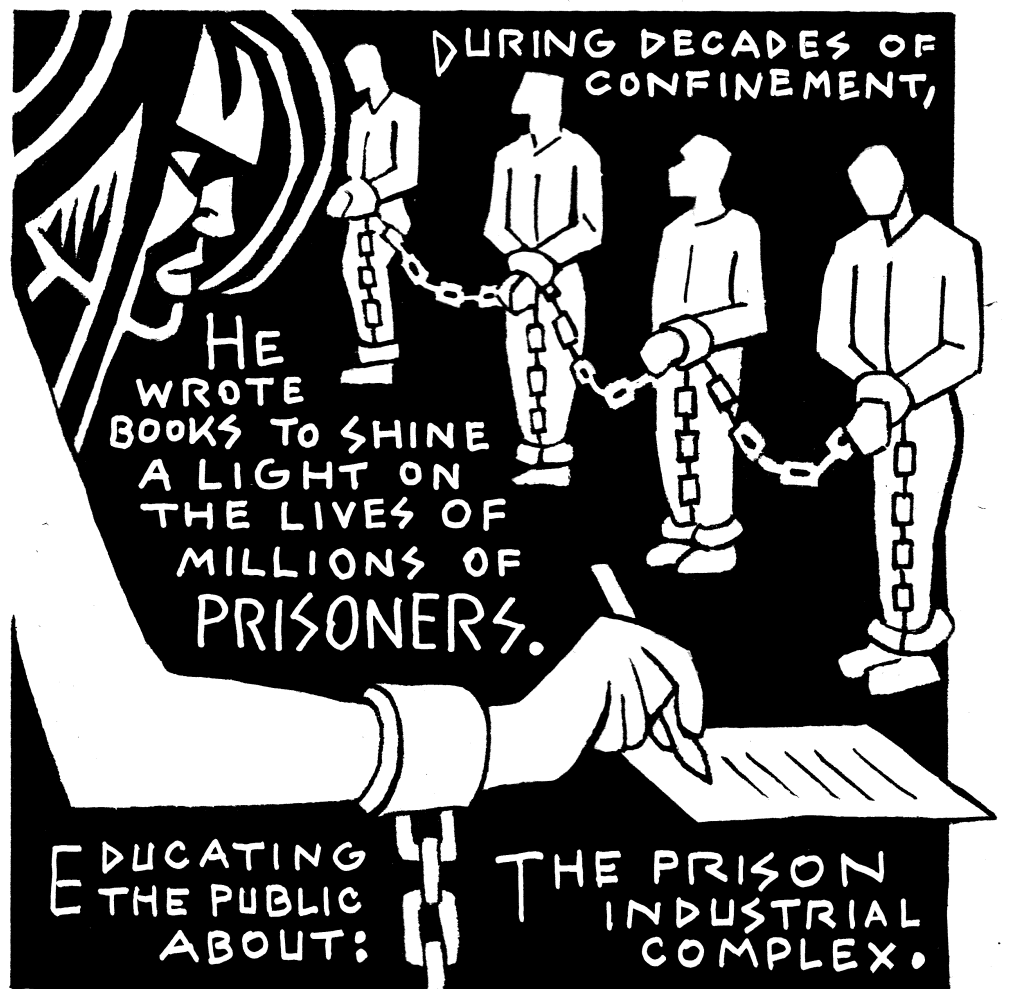
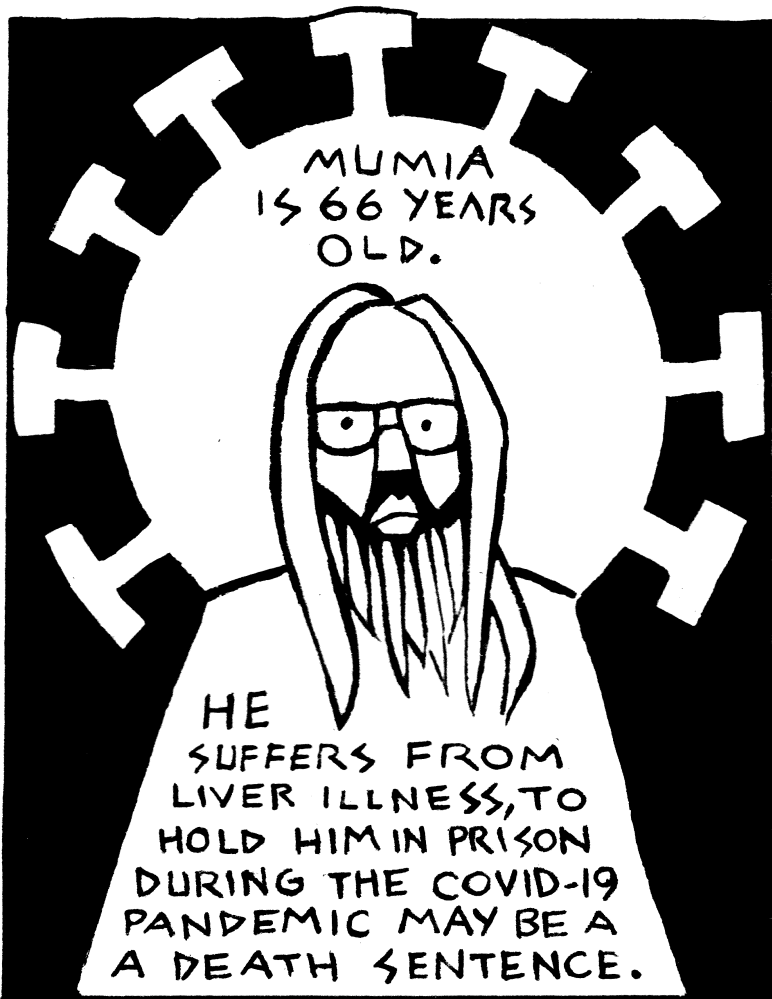
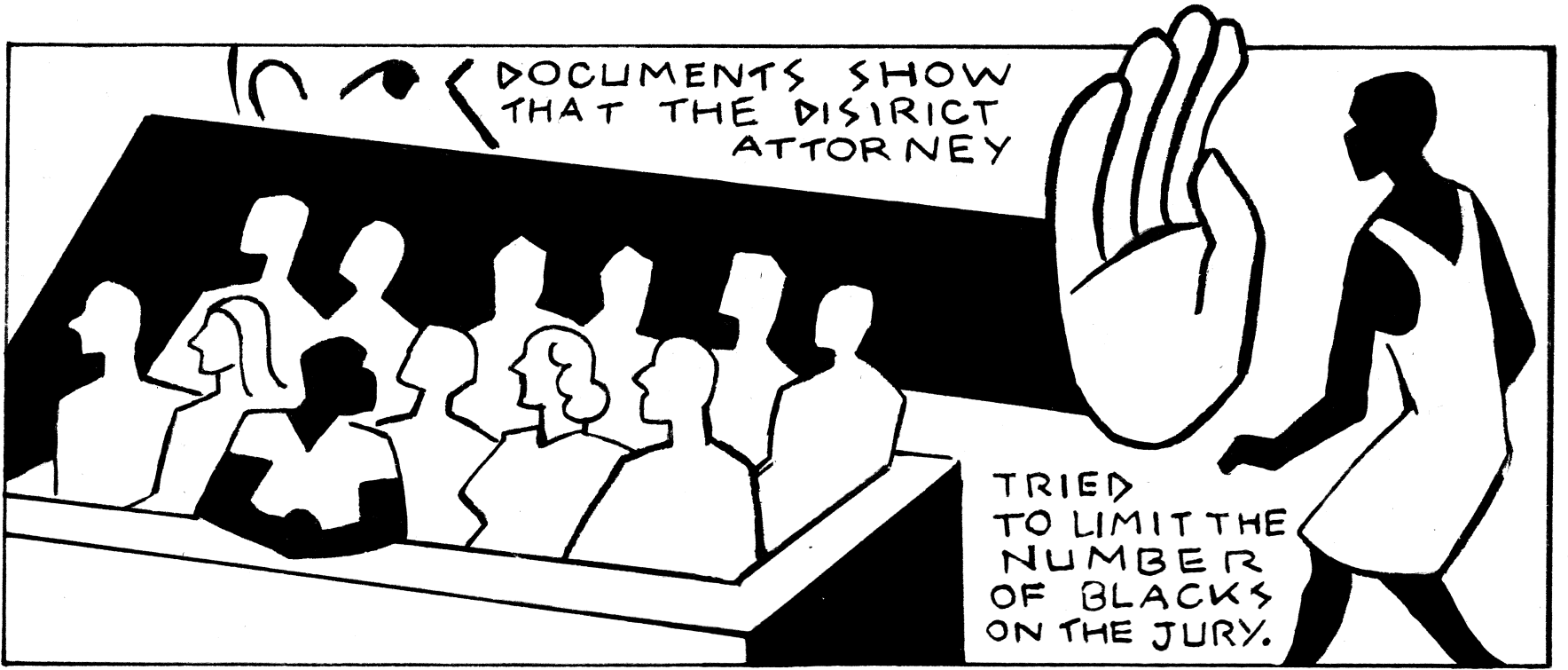
GOONNA HELP THEM FRY THE NIGGER.

MUMIA IS THE VICTIM OF CORRUPT COPS, A RACIST JUDGE, AN OUT OF CONTROL CRIMINAL JUSTICE SYSTEM. THE PROSECUTION HAD IMPORTANT DOCUMENTS FROM THE DEFENSE.

IT IS TO YOUR CREDIT THAT 6 BOXES OF HIDDEN EVIDENCE HAVE NOW BEEN TURNED OVER TO THE DEFENSE. AS THE LAW REQUIRES.

AFTER FOUR DECADES!

THE DOCUMENTS SHOW THAT A PROSECUTION WITNESS REQUESTED PAYMENT FOR HIS TESTIMONY



IT IS BECAUSE OF THE WORK OF INCARCERATED INTELLECTUALS LIKE MUMIA ABU-JAMAL THAT A MASS MOVEMENT AROSE FOR CRIMINAL JUSTICE REFORM.

IF YOU FEEL YOU ARE A PART OF THAT MOVEMENT, WE ASK YOU TO SHOW MUMIA ABU-JAMAL THE RESPECT HE DESERVES AS AN ELDER AND PREDECESSOR.



Story & Art by Seth Tobocman, Inking by Tamara Tornado

# From The Archives: Dave Lindorff on the March 27, 2008 Court Ruling

(This March 28, 2008 article by Dave Lindorff was originally titled "The Mumia Exception")

After spending almost a year's time deliberating following a hearing last May 17, a three-judge panel of the Third Circuit Court of Appeals in Philadelphia has shot down all three claims by death row prisoner Mumia Abu-Jamal challenging his conviction for the 1981 murder of Philadelphia Police Officer Daniel Faulkner.

At the same time, the appeals court upheld a 2001 decision by Federal District Judge William Yohn that had overturned former Black Panther and Philadelphia journalist Abu-Jamal's death sentence, agreeing with the lower court judge that the form used by the trial jury in 1982 to establish whether jurors felt there were any mitigating circumstances was flawed, and could have left panelists mistakenly believing that before they could consider any such mitigating factors in their deliberations, they would all have to agree such a factor existed. In fact, by law if even one juror believes that there is a mitigating factor, that factor can be considered by jurors in deciding on death or life in prison.

The court was unanimous in rejecting Abu-Jamal's claim that the trial judge, Albert Sabo, had been prejudiced against him and in favor of the prosecution when he presided over a Post-Conviction Relief Act hearing in 1995-6.

The court was also unanimous in rejecting Abu-Jamal's claim that Prosecutor Joseph McGill had improperly diminished the jury's sense of responsibility during the conviction phase of the trial by telling them that their decision would not be final as there would be "appeal after appeal." The appellate judges didn't say that McGill's statement was proper, or even that it might not have impacted jurors' decision on guilt, but rather agreed that by court precedent they had only used evidence of such prosecutorial misconduct to overturn death sentences, not convictions. (Arguably, in the unlikely event that the Philadelphia DA were successful in getting the US Supreme Court to reverse the Third Circuit and reimpose Abu-Jamal's death penalty, he could go back and appeal the sentence based upon this statement to the jury by McGill.)

## Judge Ambro's Batson Ruling Dissent

But on Abu-Jamal's third claim—that the prosecution had improperly violated his Constitutional right to a fair trial by his peers by barring 10 qualified African-American potential jurors from serving on his jury through the use of what are called "peremptory challenges"—there was a dissent, making the vote 2-1.

Judge Thomas Ambro, a Clinton appointee to the bench—chastised his two colleagues, Chief Judge Anthony Scirica and Judge Robert Cowan—both Reagan appointees—saying that they were applying a different, and unattainable standard of proof to Abu-Jamal than they had been using for other cases brought before them.

In rejecting Abu-Jamal's claim of racial bias in jury selection—something known as a Batson violation, after the Supreme Court's 1986 decision in *Batson v Kentucky*—the court majority wrote that Abu-Jamal had not made a timely protest over prosecutor McGill's rejection of 10 black jurors without cause (McGill used 15 of his 20 available peremptory challenges to remove at least 10 qualified black and 5 qualified white jurors).

The majority also proposed that because Abu-Jamal had not provided the court with the racial makeup of the jury pool, it was impossible to know whether perhaps two-thirds of that pool might have been black, giving an "innocent explanation" to

McGill's 66.7% black rejection rate. (Local attorneys scoff at such a notion, saying they've never seen a jury pool so skewed racially.)

Judge Ambro blasted this logic, saying that the US Supreme Court had established that "excluding even a single person from a jury because of race violated the Equal Protection Clause of our Constitution." Significantly, the nation's High Court just affirmed that position March 19 with a powerful 7-2 ruling in a Louisiana death penalty case (*Snyder v. Louisiana*).

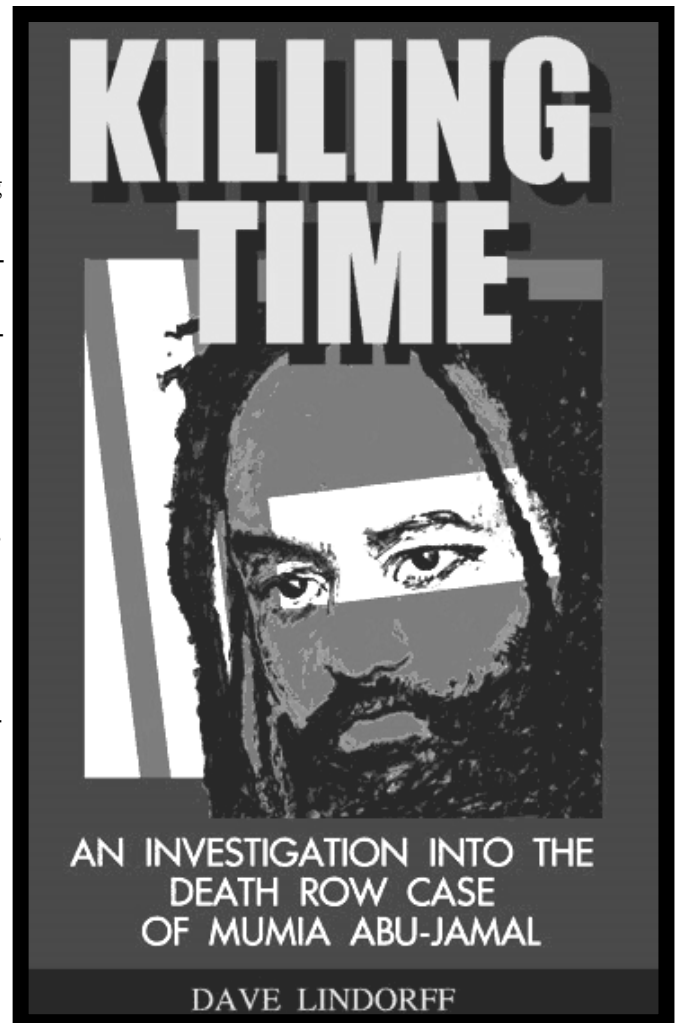
Judge Ambro then accused his robed colleagues of having a double standard, saying "Our Court has previously reached the merits of Batson claims on habeas review in cases where the petitioner did not make a timely objection during jury selection—signaling that our Circuit does not have a federal contemporaneous objection rule—and I see no reason why we should not afford Abu-Jamal the courtesy of our precedents." He added, "Why we pick this case to depart from that reasoning I do not know."

Going further, Judge Ambro writes, "We have repeatedly said that a defendant can make out a prima facie case for jury-selection discrimination by showing that the prosecution struck a single juror because of race. In fact, in *United States v. Clemons*, we explained that 'striking a single black juror could constitute a prima facie case even when blacks ultimately sit on the panel and even when valid reasons exist for striking other blacks.' ... Yet the majority focuses on the absence of information about the racial composition and total number of the venire, claiming that this statistical information—from which one can compute the exclusion rate—is necessary to assess whether an inference of discrimination can be discerned in Abu-Jamal's case. Such a focus is contrary to the nondiscrimination principle underpinning Batson, and it conflicts with our Court's precedents, in which we have held that there is no "magic number or percentage [necessary] to trigger a Batson inquiry."

One thing Judge Ambro didn't mention in his 41-page dissent was the evidence presented by Abu-Jamal to the court of a clear history of deliberate race purging of juries by the Philadelphia DA's office, and by prosecutor McGill in particular. That evidence, developed by academic researchers and by attorneys at the Federal Defenders Office in Philadelphia, show that between 1977 and 1986, while Ed Rendell was Philadelphia's District Attorney, local prosecutors used peremptory challenges to strike qualified blacks from juries in death penalty cases 58 percent of the time, compared to 22 percent of the time for qualified whites. During the same period of time, prosecutor McGill himself struck qualified black jurors 74 percent of the time in death penalty cases he tried, compared to 25 percent of qualified white jurors.

Interestingly, one of the Third Circuit precedents referred to by Judge Ambro was a 2005 case heard by Judge Sam Alito, now elevated to the Supreme Court. In that case, *Brinson v Vaughn*, Alito overturned the appellant's death penalty conviction, writing that "...a prosecutor may violate Batson even if the prosecutor passes up the opportunity to strike some African Americans jurors." Alito further stated in that decision that "a prosecutor's decision to refrain from discriminating against some African Americans does not cure discrimination against others." (Significantly, the High Court's latest *Snyder* decision opinion was also penned by Justice Alito, who shows himself to be a passionate opponent of racism in jury selection.)

What appears to be happening here, and what obviously upset Judge Ambro, is that the other two



judges, Scirica and Cowan, are demonstrating another example of what my colleague, Philadelphia journalist Linn Washington, has dubbed the "Mumia Exception."

Washington has noted that on several occasions during Abu-Jamal's epic 26-year battle to survive Pennsylvania's death row machine, the state's courts have altered the rules to keep him locked up and on course for execution.

Pennsylvania's top court in 1986 overturned a death sentence where McGill, the same prosecutor in Abu-Jamal's case, had made the same closing statement to jurors at the conclusion of a murder trial presided over by Judge Sabo, the same trial judge who presided in Abu-Jamal's case. The court, declaring that the prosecutor's language had "minimize [ed] the jury's sense of responsibility for a verdict of death," had ordered a new trial that time.

Three years later in 1989, despite this precedent and presented with an identical situation involving the same characters, the same court reversed itself, though, upholding Abu-Jamal's conviction. Eleven years later, Pennsylvania's highest court reversed track again, barring such language by prosecutors "in all future trials," but not making their decision retroactive to include Abu-Jamal.

Another example of this judicial "special handling" where Abu-Jamal's case is concerned, involves the right of allocution—the right of the convicted to make a statement without challenge before sentencing. One month before initially upholding Abu-Jamal's conviction in March 1989, the Pennsylvania Supreme Court issued a ruling declaring the right of allocution to be of "ancient origin" and saying that any failure to permit a defendant to plead for mercy demanded reversal of sentence. Abu-Jamal's appeal claimed Judge Sabo, by allowing the prosecutor to question Abu-Jamal on the stand after the convicted defendant had made just such a statement to jurors, violated his allocution right during the '82 trial. The state's high court, however—for the first time in its history—ruled that the "right of allocution does not exist in the penalty phase of capital murder prosecution."

This flip-flopping on allocution, on acceptable language for prosecutors and on other legal precedents all led Amnesty International to conclude in its 2001

Continued on page 23...



...Continued from page 22:  
**Dave Lindorff on the 2008 Court Ruling**

report on Abu-Jamal's case that the state's highest court improperly invents new standards of procedure "to apply it to one case only: that of Mumia Abu-Jamal." Justice, that is to say, has not always been blind in this case. A "Mumia Exception" had been established. And now this stain on Pennsylvania jurisprudence appears to have migrated to the federal court system, at the Third Circuit.

Says Washington, "This decision once again shows that in the Abu-Jamal case, evidence is not important. As with the Pennsylvania courts, this federal court ignored its own precedents in reaching a result that is contrary to the facts and to the law. The reason for this is what Amnesty International pointed out in their 2001 report: The Abu-Jamal case is hopelessly polluted by politics, which precludes any justice in this case."

Robert Bryan, Abu-Jamal's lead attorney, said the third Circuit Court's upholding of the death penalty reversal was a "major victory," but he said, "The fact that the court majority turned a blind eye to the racially discriminatory practices of the DA's office is outrageous."

Current Philadelphia District Attorney Lynn Abraham continued that outrageous behavior, and gave a demonstration of the toxic politics that affects the justice system where this case is concerned, at a press conference following the announcement of the court's decision, where she referred to Abu-Jamal repeatedly as an "assassin."

In fact, at no point during the trial was there ever any claim by the prosecution, or any witness testimony, to even remotely suggest that Abu-Jamal had "targeted" Faulkner for death. Rather, the prosecution claimed that he had coincidentally been parked in a taxi he was driving, across the street from where his brother William had been stopped on a traffic violation by Faulkner, and had come across the street when his brother and the officer became involved in an altercation. To wrongly label the ensuing double shooting of Faulkner and Abu-Jamal an "assassination" as Abraham did, implying a political "hit" on Faulkner, was clearly aimed at inflaming public sentiment against Abu-Jamal. It was the same thing prosecutor McGill had attempted to do when, after the verdict, during his summation to the jury in

the penalty phase of the trial back in '82, he brought out an old news clipping of an interview with a 15-year-old Abu-Jamal in which the defendant had quoted Chinese revolutionary leader Mao Tse-tung as saying "power flows from the barrel of a gun." (The context of that full article made it clear the young Abu-Jamal was referring in that quote to the power of police, who had just "assassinated" Panther leader Fred Hampton in his bed in a raid on a house in Chicago.)

With all three of Abu-Jamal's habeas claims for an overturning of his conviction rejected, his case now moves to the US Supreme Court, with a possible stop along the way for a hearing by the full Third Circuit bench. Abu-Jamal's attorney Bryan says he plans to file a request for such an en banc reconsideration of the ruling by the full Third Circuit within the next two weeks. Neither the full Third Circuit, nor the Supreme Court, are obligated to hear the case, which would make the current Third Circuit decision the final word on his conviction.

Bryan said, "Judge Ambro's dissent in the Batson decision was very powerful, and we will certainly be using it in our arguments to the full Third Circuit and to the Supreme Court."

As for the overturned death penalty ruling, which the DA's office will certainly also appeal to the High Court, should it be sustained, there are two options. The DA could decide to leave things at that—something McGill, interviewed shortly after Judge Yohn's initial ruling, said was being considered—in which case Abu-Jamal would face life in prison with no possibility of parole. He would not, however, have to spend more time in the near solitary confinement torture of Pennsylvania's maximum-security death row, but would be moved to a regular prison. Alternatively, the DA could decide to go to a Philadelphia court and impanel a new jury to conduct just a sentencing hearing, in hopes of winning a new death penalty. Such a limited trial would not address guilt or innocence—only punishment.

Given fairer rules regarding jury selection, and the larger minority population in today's Philadelphia, and Abu-Jamal's having better legal representation, it is hard to imagine the DA succeeding in convincing 12 fairly chosen Philadelphia jurors to sentence journalist him to death for a crime for which he has already served 26 hard years' time. Moreover, because a defendant is entitled to subpoena witnesses

in his defense, the DA would run the risk that Abu-Jamal could use such a trial to introduce new evidence of innocence, opening the door to further appeals of his underlying conviction. For these reasons, an effort to win a new death sentence seems unlikely.

The legal stymieing of Abu-Jamal's efforts to win a new trial comes at a time of growing questions regarding his guilt, or at least the veracity of the witnesses and the evidence used to convict him on a first-degree murder charge.

Last year, photos were discovered that had been taken by a freelance news photographer of the crime scene on the south side of Locust Street at 13th Street in Philadelphia's Center City only minutes after police had arrived and after the wounded Abu-Jamal and the clinically dead Faulkner had been taken off to Jefferson Hospital.

These photos show police tampering with evidence, including both Abu-Jamal's and Faulkner's guns as well as the officer's police hat. Photos of the bloody spot on the sidewalk where Faulkner lay as he was shot by a bullet to the face at close range show no sign of craters where three other shots Abu-Jamal is alleged to have fired from a position astride the officer and that missed should have left their marks in the concrete, raising questions about the testimony of two alleged eyewitnesses to the shooting.

Those same photos also show no taxicab parked behind Faulkner's parked squad car in the place one of those witnesses, Robert Chobert, claimed he had been stopped. The missing cab raises questions about the veracity of Chobert's claim to have witnessed Faulkner's murder. Other witnesses are still coming forward since the trial, who also challenge the prosecution's story, but without a new trial, it is not clear that their evidence will ever be heard.

Abu-Jamal's attorney says Abu-Jamal told him this morning that he was "disappointed" in the result, but that he "hopes the reversal of the death penalty will help others on death row, and says, 'The struggle continues!'"

—Dave Lindorff is the author of "Killing Time: An Investigation into the Death Penalty Case of Mumia Abu-Jamal" (2003). His work is available at [www.thiscantbehappening.net](http://www.thiscantbehappening.net)



PHOTO: Pam Africa speaks outside the Philadelphia DA's office on January 31, 2020. Photo by Jamal Journal staff photographer Joe Piette.

# Goodnight, Kiilu Nyasha

Written by  
Mumia Abu-Jamal

To people in California's north, the name Kiilu Nyasha is familiar, like an aunt or another relative. To them, she was a voice of resistance, heard on public radio, and on her television show called "Freedom is a Constant Struggle." To former members of the Black Panther party, she was Sister Kiilu, a former member of the New Haven chapter.

During the murder trial of Bobby Seale and Ericka Huggins in 1970, Sister Kiilu served as a legal assistant to attorney Charles Garry, who defended many top panthers. During the trial, Kiilu was known as Pat Gallyot.

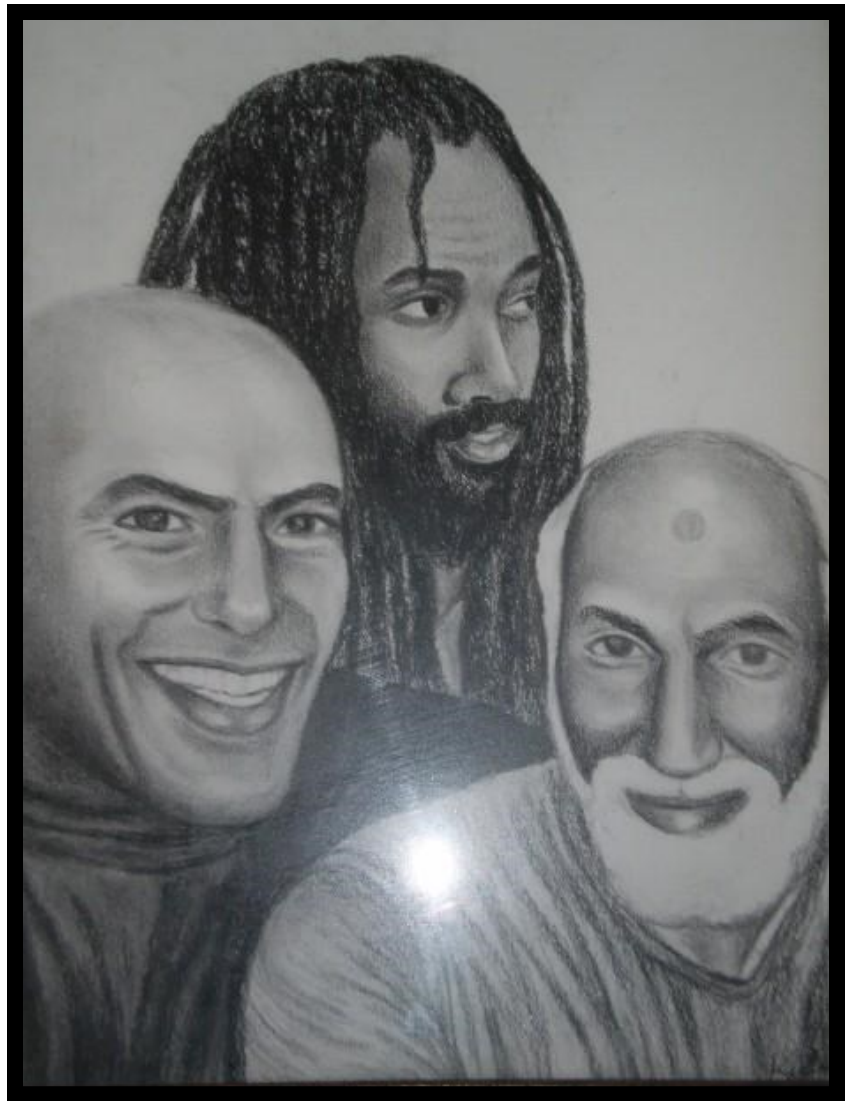


PHOTO: Kiilu Nyasha wears her Free Mumia shirt proudly.

After the party, she suffered from "polymyositis," extreme muscle inflammation that left her in a wheelchair. Yet polymyositis never stopped her or defined her. She became an immensely talented artist. She worked as a journalist, commentator and a host of radio shows.

She worked for years as a supporter of Hugo "Yogi" Pinell, the late political prisoner. She was an endless and brilliant source of resistance to the system. She became a beloved and respected elder for young people in the Bay Area.

We remember Kiilu Nyasha: mother, artist, commentator, revolutionary inspiration.



Artwork by Kiilu Nyasha portrays Mumia with political prisoners Hugo "Yogi Bear" Pinell and Albert "Nuh" Washington.

## From The Archives: "Witness to a Lynching," Kiilu Nyasha Goes to Philadelphia to Support Mumia and Observe Judge Sabo's 1995 Courtroom

(This article by Kiilu Nyasha entitled "Witness to a Lynching" was first published by the original Jamal Journal newspaper in 1995.)

After traveling to Philadelphia the week of August 13th to see about Mumia, I learned firsthand how biased Judge Albert Sabo really is.

Known as a "prosecutor in robes," and a "hanging judge" who sentenced to death 32 people (only two of whom were white), Sabo was the judge whose judicial errors and misconduct convicted Mumia Abu-Jamal of Murder and sentenced him to death in 1982: A judge who clearly had no business presiding over Post Conviction Relief Appeals (PCRA).

Sitting in Sabo's court August 15, all the reports I'd heard and read became instantly credible. I've witnessed numerous political trials wherein judges were obviously biased against the defense, but never have I seen a judge so blatantly prejudiced as Sabo. In fact, I felt badly for Abu-Jamal's lawyers who have to suffer such humiliation and disrespect in a court of law.

Throughout the hearings, virtually all of the defense motions were denied and the prosecutor's granted; objections overruled and prosecutor's sustained.

The lone exception, of course, was the Stay of Execution, a decision probably rendered from a higher level, a direct result of the international campaign, i.e., a people's victory.

I'm told that during the recent closing arguments, Judge Sabo nodded out during the defense's remarks, and then woke up to hear those of the prosecutor.

But weighing in Mumia's favor is the fact that the appellate courts have reversed, completely or in part, 11 of Sabo's capital cases.

In fact, Sabo has one of the nation's highest reversal rates: 34%!

### Mumia Versus The System

The case for a re-trial of Mumia Abu-Jamal is quite objectively a strong one. As a journalist who has broadcast interviews/commentaries by and about Abu-Jamal, corresponded with him for three years, and visited Philadelphia, I've learned enough about this very rare human being (husband/father/grandfather/activist/journalist/author and MOVE supporter) to believe him incapable of cold-blooded murder.

Mumia's philosophy is about LIFE, not death: preserving human, animal, and environmental life.

Even 700 pages of FBI files resulting from the Bureau's surveillance of Abu-Jamal from the time he was a teenaged Panther noted he had "no propensity for violence." The documents further reveal the FBI's first attempt to frame then "Westley Cook" for murder- the assassination of Bermuda's Governor in 1973. But Abu-Jamal could prove he was at work when it happened.

Of course, none of this information was allowed into the recent PCRA hearings.

### The Real Mumia

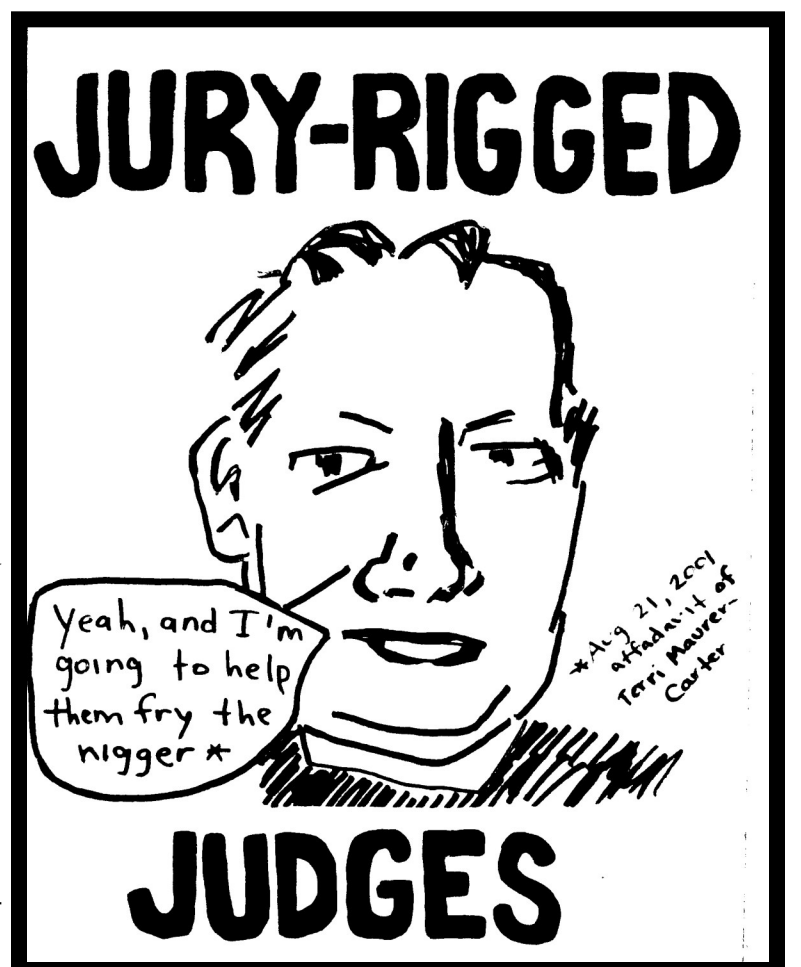
Just a fraction of the investigative digging done on O.J. would have shown Abu-Jamal to be an outstanding student who was President of his high school and frequently relied upon to settle disputes between rival gangs or fights between students; a young man who was primarily a responsible parent to his eight children; who became renowned as the "voice of the voiceless" on Philadelphia radio; the recipient of the Corporation for Public Broadcasting award, among others, and the prestigious Hellman/Hammett Grant awarded by Human Rights Watch; published in such prestigious journals as The Yale Law Review and The Nation; courageously authored a searing indictment of this system through a collection of essays

titled Live from Death Row (Addison-Wesley), and continues to speak out through his writings against this fascist government and its vicious penal system of chattel slavery and premeditated murder.

The announcement of the Stay of Appeal was indeed a victory, albeit a narrow one, in the fight for justice. Now the fight must escalate so that we can FREE MUMIA!

As Mumia said, "True justice requires more than a stay of execution-it requires a complete dismissal of this clearly political persecution... It requires the committed mobilization of our communities to resist a system that is more repressive than South Africa's-to abolish this racist death penalty!"

FREE MUMIA ABU JAMAL!



Artwork by Michelle Shocked



## From The Archives: Michael Schiffmann on Judge Albert Sabo's 1995-97 PCRA Hearings

(This April 16, 2008 article by German author Michael Schiffmann was first titled "Justice Is Just an Emotional Feeling: Judge Sabo's 1995-97 Kangaroo Court," and published in Abu-Jamal News, issue #2. This version has been edited for length.)

One of the three defense points the 3rd Court of Appeals rejected in its March 27, 2008 decision not to grant Abu-Jamal a new trial or at least new hearings in any form was the claim that the behavior of the original trial judge Albert Sabo during the 1995, 1996, and 1997 post-conviction hearings was so unfair and unconstitutional as to warrant relief.

In its decision, the court gave this point short shrift and referred to one of its earlier decisions where it says it held that federal "habeas proceedings are not the appropriate forum ... to pursue claims of error at the PCRA proceeding." Given the date of that decision (*Lambert v. Blackwell*), October 12, 2004, it is curious why the court certified Abu-Jamal's PCRA claim in the first place, a certification that took place only on December 6, 2005.

The courts recent decision practically says that however biased, immoral and outrageous a judge's behavior may be during PCRA proceedings, it will no longer be subject to federal review.

This alone is reason enough to strongly protest the recent court decision, since as we will see in a moment, Albert F. Sabo posture and deeds during Abu-Jamal's 1995-97 hearings fit all the adjectives just mentioned, and more.

### Judge Sabo at the 1982 Trial

On March 18, 1982, Abu-Jamal's then lawyer Anthony Jackson made a motion to the pre-trial judge, Judge Ribner, to have questionnaires sent out to prospective jurors in the case to enable the defense to see to it that the jury finally empanelled would be impartial and fair. This was to supply the defense beforehand with more information about the jurors, and one of the reasons Jackson said that information was needed was because of the systematic exclusion of black jurors by Philadelphia prosecutors by means of peremptory strikes.

Ribner, himself a harsh jurist who presided over 9 death sentences, transferred the decision to the trial judge, Albert Sabo, who dealt with the question on June 4 at one of the suppression hearings (during the brief period when Abu-Jamal was allowed to represent himself), of course found the concerns of the defense unfounded and a questionnaire for prospective jurors unnecessary, referring even to alleged Pennsylvania court procedure that disallowed it.

Here, a defense attempt to get information about the jurors in the pool out of which the eventual jurors would be selected, including information about race, was blocked by Judge Sabo even before the jury selection itself, even though a questionnaire, which the defense offered to pay for out of its own all but empty pockets, would likely have saved a lot of time in jury selection – and having a speedy trial was one of Judge Sabo's purported main concerns.

### Judge Sabo at the 1995-97 PCRA Hearings

After the Governor of Pennsylvania, later Homeland Security Czar Thomas Ridge, had preempted the defense's filing of its PCRA petition by signing an execution order against Abu-Jamal for August 17 on June 1, 1995, Judge Sabo, in a rare display of judicial sadism, refused to stay the execution until August 7, when the proceedings were already well under way.

That meant that the prisoner moved into the so-called "phase 2," which in turn meant that Abu-Jamal was stripped of almost all personal belongings, placed under permanent 24 hour supervision, and stripped of the right to use the prison legal li-

brary resources at a time when he needed them most.

Judge Sabo used Abu-Jamal's execution date repeatedly as an excuse to quash subpoenas of important witnesses, to deny supplemental petitions, to interrupt defense attorneys' arguments, and even to fine and in one case throw them in jail.

When Judge Sabo finally granted a stay of the execution ten days before the set date, he gleefully told the defendant and his understandably jubilant supporters: "Calm down, don't be too happy because that's only for this one."

In a stunning display of bias, Judge Sabo himself disrupted what is called "courtroom decorum" by allowing off-duty police officers to carry their guns with them into the courtroom.

After repeated statements by the defense concerning this, at the hearing on July 31, 1995 he said: "They are in here for my protection. [...] Any police officer that is in here is authorized to."

### Judge Sabo on the Batson Issue

When on August 2, 1995 the defense tried to subpoena clerks from the Administrative Office of the Pennsylvania Courts as well as the Jury Commissioner of the County of Philadelphia as part of their PCRA petition argument that jury pools were not drawn "from a fair cross section of the community," Sabo silenced Mumia's attorney and had her locked up in a jail cell instead.

When all subpoenas were quashed, another of Mumia's lawyers stated during the defense's closing argument on September 11, 1995: "We have been precluded from presenting any evidence with respect to the racially-biased manner in which jury pools were selected in Philadelphia in 1982."

This is particularly stupefying since twelve and a half years later, the 3rd Circuit Court of Appeals:

(1) Denies Abu-Jamal relief on the question of racism in jury selection because of an alleged lack of defense data on the racial composition of the jury pool, the very question one of Mumia's lawyers tried to address when Sabo locked her up.

(2) Declares that whatever Judge Sabo did during the PCRA hearings can no longer be part of any federal review, including his move to block the defense from getting hold of the data that the court now demands.

### Judge Sabo on eyewitness Robert Harkins

On August 2, 1995, Sabo blocked one of Abu-Jamal's lawyers from completing his examination of a potentially important eyewitness of the events on December 9, 1981, cab driver Robert Harkins, who described the shooting of P.O. Faulkner in a way that flatly contradicted the prosecution's eyewitness testimony at the 1982 trial.

When Harkins, apparently under intense police/prosecution pressure in the days before his PCRA testimony, for the first time ever claimed to have seen the shooter slump down exactly where the police claimed to have found Abu-Jamal, Sabo prevented any further examination of this witness by the defense.

In the meantime, this has emboldened those for whom Abu-Jamal's guilt is an article of faith to claim Harkins as a "fifth" prosecution eyewitness, whereas in fact everything else that Harkins ever testified totally contradicts the prosecution's story of the shooting.

In connection with this, Sabo uttered one of the most shocking sentences during all of the PCRA hearings. When Abu-Jamal's lawyer insisted on questioning Harkins further "to seek justice" and "to ensure that an innocent person is not executed,"

Sabo, after snappishly interrupting him with the words "How about when it [sic] is guilty," brutally revealed the apparent guidelines of his judicial career: "Counselor, justice is an emotional feeling. That's all it is. [...] Justice is an emotional feeling. When I win my case, it's justice. When I lose my case, I didn't get justice, you know. So take it from there."

### Judge Sabo Denies Every Claim

After the final arguments from both sides on September 11, 1995, it took Judge Sabo no more than four days to churn out a 154-page decision with 290 factual findings where he denied every argument made by the defense and found everything that the prosecution had said true.

His clerks could hardly have written a decision of such length and detail in such a short time without the judge already dictating what to write during the hearing itself in which he was supposed to be a neutral arbiter.

In his decision Sabo virtually duplicated, with all factual mistakes, omissions and distortions, the representations in the prosecution's PCRA brief about Police Officer Gary Wakshul, the officer who (assigned to guard the arrested Abu-Jamal on December 9, 1981) had expressly stated that Abu-Jamal had made "no comments" at the time, but who would 64 days later claim to have heard a murder confession by the defendant.

At the 1982 trial, Sabo had blocked this very same officer from being brought to the courtroom to be questioned by the defense on this glaring contradiction.

### The 1996 PCRA Hearing: Veronica Jones

Veronica Jones, an original defense witness at the 1982 trial first told police that she saw two men run away from the December 1981 crime scene. Jones then recanted at Abu-Jamal's 1982 trial and said she had seen nothing. At the 1996 PCRA Hearing, Jones told her full story, about how the police had coerced her into giving false testimony at the trial. Immediately after testifying, Judge Sabo allowed her to be arrested on the stand for petty charges.

That was quite different from the treatment of the main prosecution witness at Abu-Jamal's 1982 trial, Cynthia White, who was brought to the trial from Massachusetts where she served time for prostitution, but was never harassed by Sabo for her outstanding cases in Philadelphia for the same "crime."

### The 1997 PCRA Hearing: Pamela Jenkins

At Abu-Jamal's final PCRA hearing in 1997, Pamela Jenkins, another Philadelphia prostitute in 1981, testified that like Jones, she was pressured by the police regarding Abu-Jamal.

Jenkins said she was asked by police to testify that she saw Abu-Jamal shoot Faulkner, even though she wasn't even at the crime scene.

Jenkins also testified that she knew how the police had coerced star prosecution witness Cynthia White into mendaciously claiming that Abu-Jamal was the shooter and that she had recently very briefly come across White in person in an attempt to get her to recant her lies. After Jenkins testified about seeing Cynthia White, Judge Sabo allowed the prosecution to produce highly dubious documents according to which White had been "deceased" since 1992.

Before the three-day 1997 hearing, the prosecution had never mentioned that "fact." Whereas Sabo found this sudden discovery by the prosecution credible, in the year before he had mockingly dismissed the defense attorney's claim that they couldn't find Jones before 1996.



# From The Archives: Michael Schiffmann's Analysis of the 2008 Third Circuit Court's Unjust Denial of Mumia Abu-Jamal's Batson Appeal

Featuring a photo-essay by Jamal Journal staff photographer Joe Piette, from the May 21, 2008 demonstration for Mumia outside of the Philadelphia District Attorney's Office. The protest was held shortly after the March 27, 2008 Court ruling.

*(This abridged and edited version of a June 2008 article "The Distortion of Facts and the Law in the Service of Politics: Some Elementary Considerations Concerning the 2008 Court Decision re Batson," was published in the 3rd issue of Abu-Jamal News.)*

The 3rd Circuit Court of Appeals in its March 27, 2008 decision denied Mumia Abu-Jamal a new trial or hearing. Abu-Jamal's appeal was based on the so-called Batson issue, which addresses prosecutorial racism in jury selection. The court's decision was based on speculation that prosecutor McGill's 66.7 percent "strike rate" against blacks, making them at least ten times more likely to be excluded from the jury, might be explained by some purported massive black overrepresentation in the jury pool. This conclusion was clearly wrong.

In its opinion, the court majority claimed that the defense lacked the data to prove that prosecutor Joseph McGill used his peremptory challenges in a systematic fashion to exclude blacks. The court conceded that the defense did supply data on the so-called "strike rate"; McGill undisputedly used at least 10 out of 15 peremptory strikes against blacks – a strike rate of 66.7 percent. However, the court asserted that in order to properly evaluate this strike rate in the Abu-Jamal case, the defense had to supply data on the race of all the jurors that were questioned, in the case of Abu-Jamal, 157 people.

However, this begs the question: Why should that even matter?

The large majority of the jurors – 107, were struck, not peremptorily, i.e., without giving a reason, but

"for cause," and therefore their race was irrelevant. The final authority on who gets struck for cause and who is left for the opposing parties to either accept or strike peremptorily is the judge, not the prosecutor. And the whole Batson issue is not about the judge, but the prosecutor, and not about strikes for cause, but about peremptory strikes.

## The Two Elephants in the Room

The March 27 court ruling distorts the record by ignoring data that the defense actually did supply in its October 15, 1999 habeas corpus petition and in filings preceding the May 2007 Abu-Jamal hearing in Philadelphia.

As noted above, the overwhelming majority – 107 of the 157 jurors questioned during the pre-trial empaneling of Abu-Jamal's jury were struck for cause for one of three reasons:

(1) personal hardship involved in serving two to three weeks on a sequestered jury, (2) doubts whether they could be fair (many had already concluded he was guilty), or (3) opposition to the death penalty, which was by no means limited to blacks.

Five persons were either seated as one of the four alternate jurors or – in the case of one person – peremptorily struck from being an alternate.

This left 45 people of whom 19 of were struck by the defense and 15 by the prosecution, leaving 12 to be seated as jurors. These 45 constituted 28.7 percent of the whole pool of potential jurors questioned during the "venire" process. Further, subtracting from these 45, the 6 persons initially struck by the defense before the prosecutor could strike or accept them, left

39 (24.8 percent of the whole venire.) Only at that point in the process, the prosecutor had an opportunity to display either neutrality or racial bias concerning who was peremptorily struck.

The racial composition of this set of 39 persons, and it alone, should logically be the basis to put the prosecutor's "strike rate" of 66.7 percent against black persons into perspective. They alone were the persons against whom he could use peremptory strikes. However, as the court mentioned in a mere footnote of the March 27 decision:

Abu-Jamal contends the prosecutor had the opportunity to strike thirty-nine venirepersons, of which fourteen were allegedly black, but he does not cite any record support for these numbers. We see no record support for these numbers.

Despite this assertion, all 39 persons who the prosecutor had an opportunity to accept or peremptorily strike and the additional 6 persons struck first by the defense are listed, from the Abu-Jamal voir dire transcripts and appeals proceedings, by name, race, day of service and transcript page numbers on p. 18-21 of the July 19, 2006 defense brief. In its decision, the court never provides a single argument trying to show that any of these data are wrong. The contention that the defense "does not cite any record support for these numbers" is simply false.

Actually, the defense gives meticulous lists to show that indeed of these 39 persons, 14 were black – and that the rest, 25, were white, that is, the composition was 35.9 percent black versus 65.1 percent white.

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**Michael Schiffmann on the 2008 3rd Circuit Court's Denial of Mumia's Batson Claim**

This percentage of African Americans is already slightly smaller than their percentage in the 1980 racial composition of Philadelphia, but the prosecutor still used the vast majority, 66.7 percent, of his peremptories to remove even more of them.

Regarding “exclusion rates”, in the sense defined by the court, the only thing that rationally makes sense is a comparison between these two numbers – the set of persons whom the prosecutor could strike peremptorily – 35.9%; and the set of persons whom he did strike peremptorily – 66.7%.

Pushing this a little further and factoring in the 6 persons, all white, struck by the defense before the prosecutor could accept or strike them, does not change the number of black persons but brings the total of white persons to 31; so that the black to white ratio is now 31.1% to 68.9%.

Finally, factoring in the 4 alternate jurors that the prosecutor could have struck peremptorily but did not gives an even starker picture. As mentioned above, there were 5 persons who were considered as alternate jurors. One was peremptorily struck by the defense. Abu-Jamal's 1999 habeas corpus petition identifies all of them as white.

This raises the number of potential jurors whose race is either given in the July 19, 2006 defense filing (45) or identified in the 1999 habeas petition and easily checkable from the record (another 5) to 50, or 31.8 percent of the entire venire, certainly a not insubstantial percentage. Looking at the racial composition of these 50 persons, the final ratio is 28 percent blacks to 72 percent whites. None of these data are mentioned anywhere in the March 27, 2008 ruling, not even in Judge Ambro's 41-page dissent on the Batson question. To his credit, Ambro argues for a new hearing for Abu-Jamal even without considering these data.

Also, very strikingly, the whole 118-page court decision fails to even mention any of the statistical data supplied by the defense on a systematic pattern of discrimination by the Philadelphia District Attorney's Office in general or by prosecutor Joseph McGill in particular, data that went far beyond and supplied background to McGill's 66.7 percent strike rate of blacks in Abu-Jamal's June 1982 trial. But that does not mean this evidence was not supplied by the defense. It was simply ignored by the court, apparently being too inconvenient.

In its centrally important July 19, 2006 brief, the defense clearly argues, from the known number and from the record that considering the 39 relevant venirepersons:

*“the prosecutor struck 71% (10 of 14) of the blacks he had an opportunity to strike, but struck just 20% (5 of 25) of the whites he had an opportunity to strike – i.e., he struck blacks at 3.6 times the rate than he struck whites. The odds of being struck if you were black were 2.5-to-1 (10 to 4). But the odds of being struck if you were white were just 0.25-to-1 (5 to 20) – i.e., a black person's odds of being struck were 10 times higher than someone who is white.”*

These two facts – that the defense had supplied statistically significant hard data on the race of approximately one third (50 out of 157) potential jurors, and that if one compares the rates with which the prosecutor struck blacks to the rates with which he struck whites, one finds the striking disparity that a black person was ten times as likely to be struck as a white one – these two facts are the two big elephants in the courtroom in this case which won't go away and are there for everyone to see, but which none of the judges of the 3rd Circuit wanted to talk about.

Court precedent on Batson clearly – and rightly – says that statistical data to evaluate a claim of discrimination should not be applied “mechanically,” but rather, in a meaningful way. So it should have been in this case, and yet it was not. Already right after the May 17, 2007 court hearing, journalist and author Dave Lindorff pointed out that the argument of possible “overrepresentation” of black people in the jury pool was not only highly speculative but, given the concrete conditions in the case at hand, also bordering on the absurd.

Since in 1982 prospective jury pools were (theoretically randomly) drawn from voter lists, the likelihood of black overrepresentation was very small as Black people nationwide, and in Philadelphia (with a Black population of around 38 percent in 1980) in particular, tended, if any-thing, to be underrepresented in the voter registration lists.

**Some Additional Data & Conclusion**

Scrutinizing for a more detailed understanding of the data, the picture is very much the same. I have data from the voir dire transcripts for 85% (134 of 157) of the venirepersons. 70 (or 52%) of these indicated where they lived by larger sections, such as South Philadelphia, Germantown etc.; sometimes they also indicat-

ed the neighborhood. 28 additional jurors (or 21%) only indicated the neighborhood. Thus, there is residential data on 73% of these 134.

25 (or 36%) of the 70 persons who identified themselves by larger area came from Northeast Philadelphia, which in 1980 was almost all white. 15 (or 21%) came from heavily black North Philadelphia. Another 12 (or 17%) came from racially mixed South Philadelphia – but most of these were Italian, i.e., white. An analysis by neighborhood pretty much shows the same picture. Thus, the data once again very strongly suggests that the racial composition of the jury pool was similar to the racial composition of the city as a whole in 1980, with a tendency, if any, of black underrepresentation.

The court's argument claiming that racial data about all 157 venirepersons in the Abu-Jamal case is necessary or even relevant to evaluate Abu-Jamal's Batson claim is clearly unfounded anyway, but even here, the data are not in favor of the court's suspicions. But more importantly, once one takes a look at the data that are relevant, the court's claims with which it denies Abu-Jamal relief fall apart and this last-ditch argument to deny Abu-Jamal “on the merits” relief in the Batson issue becomes incredible.

If Abu-Jamal were given a new hearing on this issue, this could be demonstrated once and for all for everyone to see.





# From The Archives: Author J. Patrick O'Connor Argues That "Not Even the U.S. Supreme Court is Immune From the Mumia Exception."

(This May 1, 2009 article by J. Patrick O'Connor was first published at *CrimeMagazine.com* as "The Mumia Exception." O'Connor is the author of the 2008 book "The Framing of Mumia Abu-Jamal.")

Since his conviction in 1982 for the murder of Philadelphia Police Officer Daniel Faulkner, Mumia Abu-Jamal, through his numerous books, essays and radio commentaries, has become the face of the anti-death penalty movement in the United States and an international cause célèbre. Paris, for example, made him an honorary citizen in 2003, bestowing the honor for the first time since Pablo Picasso received it in 1971. The "Free Mumia" slogan is seen and heard around the world. Over the last 27 years he has become the most visible of the invisible 3,600 Death Row inmates in the United States.

The case of Mumia Abu-Jamal cries out for justice not because he is famous but because he is innocent. Kenneth Freeman, the street-vendor partner of Abu-Jamal's younger brother, Billy Cook, killed Officer Faulkner moments after Faulkner shot Abu-Jamal in the chest as he approached the scene where Faulkner had pulled over the car Cook was driving. When Faulkner began beating Cook with an 18-inch long flashlight, Abu-Jamal ran from his nearby taxi to come to his brother's aid. After Abu-Jamal was shot and collapsed to the street, Freeman emerged from Cook's car, wrestled Faulkner to the sidewalk and then shot him to death. Freeman fled the scene on foot. Numerous witnesses told police they saw one or more black men fleeing right after the officer was shot. A driver's license application found in Faulkner's shirt pocket led the police directly to Freeman's home within hours of the shooting.

But the police did not want Freeman for this killing, releasing him without him even having to call his attorney. The police, led by the corrupt Inspector Alfonzo Giordano who took charge of the crime scene within minutes of the shooting, wanted to pin Faulkner's death on the blacked-out, police-bashing radio reporter at the scene. Freeman they would deal with later, meting out their own brand of street justice in the dead of night.

Five days after Faulkner's death, the Center City newsstand where Freeman and Billy Cook operated a vending stand burned to the ground at about 3 a.m. Freeman told a Philadelphia Inquirer reporter hours after the arson that "there was no question in my mind that the police are behind this." The Inquirer also quoted a Center City police officer who was on patrol in the area that morning as saying, "It's entirely possible" that "certain sick members" of his department were responsible. "All I know is when I got to the station to start my shift at 7:30 this morning, the station house was filled with Cheshire grins." Although the "unsolved" arson bankrupted Freeman and Cook, a worse fate awaited Freeman.

On the night in 1985 when the police infamously firebombed the MOVE home and burned down 60 other row houses in the process, incinerating 11 MOVE members including five children, Freeman's dead body would be found nude and gagged in an empty lot, his hands bound behind his back. There would be no police investigation into this obvious murder: the coroner listed his cause of death as a heart attack. Freeman was 31.

Abu-Jamal had been well known to local police since he joined the Philly chapter of the Black Panther Party at age 15. The next year he was named "lieutenant of information," an appointment the Inquirer ran on its front page, picturing the young radical at Panther headquarters. Even though the chapter would soon dissolve, both the police and the FBI

continued to monitor Abu-Jamal when he left Philadelphia to attend Goddard College in Vermont and on his return to Philadelphia to take up his radio career. As his career took wing, landing him a high-profile job at Philadelphia's public radio station, that scrutiny intensified due to his overtly sympathetic coverage of the radical counter-culture group MOVE. Throughout the 1970s and well into the 1980s, police confrontations with MOVE were brutal displays of civic discord and police abuse that culminated in the 1985 firebombing.

Abu-Jamal's case has been politically charged from the beginning. By the time he was arrested for the murder of Officer Faulkner, he was a marked man to the police for his Black Panther Party association and his favorable reporting of MOVE. Inspector Giordano, who detested both Abu-Jamal and MOVE, would set the framing of Abu-Jamal in motion by falsely claiming that Abu-Jamal had told him in the paddy wagon that he had killed Faulkner. (Giordano would not be called by the prosecution to reiterate his fabrication at Abu-Jamal's trial. Instead, on the first business day following Abu-Jamal's sentencing, Giordano would be "relieved" of his duties by the police department on what would prove to be well-founded "suspicions of corruption." An FBI probe of rank corruption within the Philadelphia Police Department – the largest ever conducted by the U.S. Justice Department of a police force – would lead to Giordano's conviction four years later. The FBI investigation would ensnare numerous other high-ranking Philadelphia police officials and officers, many of them involved in Abu-Jamal's arrest and trial. Deputy Police Commissioner James Martin, who was in charge of all major investigations, including Faulkner's death, was the ringleader of a vast extortion enterprise operating in City Center.)

The trial of Abu-Jamal was a monumental miscarriage of justice from beginning to end, representing an extreme case of prosecutorial abuse and judicial bias. A pamphlet published by Amnesty International in 2000 stated it had "determined that numerous aspects of Mumia Abu-Jamal's case clearly failed to meet minimum standards safeguarding the fairness of legal proceedings."

The trial judge, Common Pleas Court Judge Albert F. Sabo, presided at more trials that resulted in the defendants receiving the death penalty than any judge in the nation. Of the 31 so sentenced, five won reversals on appeal, an indication of extreme judicial bias. The Inquirer called him "a defendant's worst nightmare," a prominent defense attorney referred to him as "a prosecutor in robes." A former court stenographer said in an affidavit in 2001 that during Abu-Jamal's trial she overheard Sabo tell someone at the courthouse, "Yeah, and I am going to help them fry the nigger."

During the third day of jury selection, Sabo stripped Abu-Jamal of his right to represent himself and interview potential jurors despite the fact that the Inquirer reported Abu-Jamal was "intent and business like" in his questioning. On the second day of the trial, Sabo removed Abu-Jamal from the courtroom for insisting that MOVE founder John Africa replace his court appointed backup counsel, Anthony Jackson. In turn, Sabo appointed Jackson to represent Abu-Jamal. This would put to rout the possibility of a fair trial.

Abu-Jamal's first major appeal issue developed during jury selection when the prosecutor, Assistant D.A. Joseph McGill, used 10 or 11 of the 15 peremptory challenges he exercised to keep otherwise qualified blacks from sitting on this death-penalty-vetted jury. In a city with more than a 40 percent

black population at the time, Abu-Jamal's jury ended up with only two blacks. In 1986 – four years after Abu-Jamal's trial – the U.S. Supreme Court ruled in *Batson v. Kentucky* that it was unconstitutional for a prosecutor to exclude potential jurors on the basis of race. The ruling was retroactive.

The second major constitutional claim that would arise occurred at the end of the guilt phase of the trial when the prosecutor referenced the appeal process in his summation to the jury. He told the jury that if they found Abu-Jamal guilty of murder in the first degree that "there would be appeal after appeal and perhaps there could be a reversal of the case, or whatever, so that may not be final."

Although Officer Faulkner had been killed by Kenneth Freeman, the prosecution mounted its evidentiary case against Abu-Jamal on the perjured testimony of a prostitute informant and a cab driver with a suspended license for two DUIs who was on probation for throwing a Molotov cocktail into a school yard during a school day. Both of these witnesses had been handpicked by Giordano at the crime scene.

## "The Mumia Exception"

As Amnesty International established in its 2000 pamphlet entitled "The Case of Mumia Abu-Jamal: A Life in the Balance," his tortuous appeal process has been fraught with "judicial machinations." Claims that won the day in other cases were repeatedly denied him.

In 1989, the Pennsylvania Supreme Court turned down his first appeal even though one of his claims was almost identical to one that had persuaded the same court to grant Lawrence Baker a new trial in 1986. In that case, *Commonwealth v. Baker*, the court overturned Baker's death sentence for first-degree murder on the grounds that the prosecutor improperly referenced the lengthy appeal process afforded those sentenced to death. That prosecutor – Joseph McGill – was the same prosecutor who used similar – almost verbatim – language in his summation during both the guilt and sentencing phases of Mumia's trial. The judge who failed to strike the language in the Baker case was the same judge who presided at Mumia's trial, Common Pleas Court Judge Albert F. Sabo.

The State Supreme Court ruled in Baker that the use of such language "minimize[ed] the jury's sense of responsibility for a verdict of death." When Abu-Jamal's appeal included the very same issue, the court reversed its own precedent in the matter, denying the claim in a shocking unanimous decision.

A year later, in *Commonwealth v. Beasley*, the Pennsylvania Supreme Court reinstated the death sentence of Leslie Beasley, but exerted its supervisory power to adopt a "per se rule precluding all remarks about the appellate process in all future trials." This rule not only reinstated the Baker precedent but it ordered all prosecutors in the state to refrain once and for all from referencing the appellate process in summations to the jury. The court could have made this new rule retroactive to Mumia's case, but did not.

As Amnesty International declared in its pamphlet about the case, the Pennsylvania Supreme Court's judicial scheming leave "the disturbing impression that the court invented a new standard of procedure to apply to one case only: that of Mumia Abu-Jamal." Temple University journalism professor Linn Washington aptly dubs this and subsequent court decisions denying Mumia a new trial "the

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Mumia exception.”

Abu-Jamal's Post-Conviction Relief Act hearing in 1995 was doomed from the beginning when Judge Sabo – the original trial judge – would not recuse himself from the case and the Pennsylvania Supreme Court would not remove him for bias.

Abu-Jamal's federal habeas corpus appeal – decided by Federal District Judge William Yohn in 2001 – should have resulted in at least an evidentiary hearing on Abu-Jamal's Batson claim that the prosecutor unconstitutionally purged blacks from the jury by using peremptory strikes to exclude 10 or 11 otherwise qualified black jurors from being empanelled. Abu-Jamal's attorneys had included a study conducted by Professor David Baldus that documented the systematic use of peremptory challenges to exclude blacks by Prosecutor McGill in the six death-penalty cases he prosecuted in Common Pleas Court in Philadelphia. Abu-Jamal's trial was one of the six trials studied by Baldus. Judge Yohn barred the study on the erroneous grounds that the study was not from a relevant time period when, in fact, it was completely relevant. Judge Yohn's error was egregious and could have been easily avoided if he had held one evidentiary hearing on that defense claim. But during the two years that Judge Yohn considered Abu-Jamal's habeas appeal, he held no hearings.

The U.S. Court of Appeals for the Third Circuit should have corrected that district court mistake by remanding Abu-Jamal's case back to Judge Yohn to hold the evidentiary hearing on the Batson claim, but in another example of the “Mumia exception,” the court instead continued the long and tortured denial of Mumia's right to a fair trial. In a 2 to 1 decision released on March 27, 2008 that reeked of politics and racism, the court ruled that Abu-Jamal had failed to meet his burden in providing a prima facie case. He failed, the majority wrote, because his attorneys were unable to establish the racial composition of the entire jury pool.

In the decision written by Chief Judge Anthony Scirica, the court stated that “Abu-Jamal had the opportunity to develop this evidence at the PCRA evidentiary hearing, but failed to do so. There may be instances where a prima facie case can be made without evidence of the strike rate and exclusion rate. But, in this case [i.e., “the Mumia exception” is in play], we cannot find the Pennsylvania Supreme Court's ruling [denying the Batson claim] unreasonable based on this incomplete record.”

In a nutshell, the majority denied Mumia's Batson claim on a technicality of its own invention, not on its merits. It also broke with the sacrosanct stare decisis doctrine – the principle that the precedent decisions are to be followed by the courts – by ignoring its own previous opposite ruling in the Holloway v. Horn case of 2004 and the Brinson v. Vaughn case of 2005. It is a general maxim that when a point has been settled by decision, it forms a precedent which is not afterwards to be departed from. In a Ninth Circuit Court of Appeals ruling in 1989 in a case entitled *United States v. Washington*, the decision stated that an appeal court's panel is “bound by decisions of prior panels unless an en banc decision, Supreme Court decision, or subsequent legislation undermines those decisions.” None of those variables were in play when the Third Circuit Court majority ruled against Mumia's Batson claim.

Judge Thomas Ambro's sharp dissent addressed “the Mumia exception” head-on: “Why we pick this case to depart from [3rd Circuit precedent] I do not know.” He wrote that he could “not agree with them

[the majority] that Mumia Abu-Jamal fails to meet the low bar for making a prima facie case under Batson. In holding otherwise, they raise the standard necessary to make out a prima facie case beyond what Batson calls for.”

In other words, the majority, in this case alone, has upped the ante required for making a Batson claim beyond what the U.S. Supreme Court stipulated. When ruling in *Batson* in 1986, the U.S. Supreme Court did not require that the racial composition of the entire jury pool be known before a Batson claim may be raised. The high court ruled that a defendant must show only “an inference” of prosecutorial discrimination in purging potential jurors. Prosecutor McGill's using 10 or 11 of the 15 peremptory strikes he deployed is just such an inference – and an extremely strong one. McGill's strike rate of over 66 percent against potential black jurors is in itself prima facie evidence of race discrimination. Prima facie is a Latin term meaning “at first view,” meaning the evidence being presented is presumed to be true unless disproved.

In commenting on *Holloway v. Horn*, a Batson-typecase with striking similarities to Abu-Jamal's claim, Judge Ambro – the lone Democrat-appointed judge on the three judge panel – demonstrated just how disingenuous the panel's ruling against Abu-Jamal's Batson claim was. In *Holloway*, Judge Ambro wrote in his 41-page dissent, “we emphasized that ‘requiring the presentation of [a record detailing the race of the venire] simply to move past the first state – the prima facie stage – in the Batson analysis places an undue burden upon the defendant.’ There we found the strike rate – 11 of 12 peremptory strikes against black persons – satisfied the prima facie burden.” In *Holloway*, the Third Circuit ruled that the Pennsylvania Supreme Court's decision denying *Holloway*'s Batson claim was “contrary to” and an “unreasonable application” of the Batson standard.

In fact, in rendering both its *Holloway* and *Brinson* decision, the Third Circuit specifically rejected the requirement that a petitioner develop a complete record of the jury pool. In making its ruling in Abu-Jamal's appeal, it reversed itself to make the pretext of an incomplete jury record his fatal misstep. Basing its ruling against Abu-Jamal's Batson claim on this invented pretext demonstrated how desperate the majority was to block Abu-Jamal's Batson claim. What the majority was implying was that Abu-Jamal's jury pool may well have consisted of 60 or 70 percent black people and that therefore the prosecutor's using 66 percent of his strikes to oust potential black jurors was statistically normal and did not create a prima facie case of discrimination. This hypothesis is, of course, absurd on its face. Blacks have been underrepresented on Philadelphia juries for years – and remain so today. What was likely was that the jury pool at Abu-Jamal's trial was at least 70 percent white.

The Third Circuit – if it had followed its own precedent – would have found the Pennsylvania Supreme Court's ruling denying Abu-Jamal's Batson claim “contrary to” and an “unreasonable application” of the Batson standard and remanded the case back to Federal District Court Judge Yohn to hold an evidentiary hearing to determine the prosecutor's reasons for excluding the 10 potential black jurors he struck. If that hearing satisfied Judge Yohn that all of the prosecutor's reasons for striking potential black jurors were race neutral, the Batson claim would fail. If, conversely, that hearing revealed racial discrimination on the part of the prosecutor during jury selection – even if only concerning one potential juror – Judge Yohn

would have been compelled to order a new trial for Abu-Jamal.

Abu-Jamal's final opportunity for judicial relief was filed with the U.S. Supreme Court in November of 2008 in the form of a Petition for a Writ of Certiorari. On February 4, the high court docketed and accepted that filing. According to Abu-Jamal's lead attorney, Robert Bryan of San Francisco, “The central issue in this case is racism in jury selection. The prosecution systematically removed people from sitting on the trial jury purely because of the color of their skin, that is, being black.”

For at least two compelling reasons, it appeared that the U.S. Supreme Court would grant Abu-Jamal's petition. In its last term, the high court expanded its 1986 *Batson* ruling in its *Snyder v. Maryland* decision to warrant a new trial if a minority defendant could show the inference of racial bias in the prosecutor's peremptory exclusion of one juror. Under *Batson*, the defense needed to show an inference – i.e., a pattern – of racial bias in the overall jury selection process. Ironically, the Supreme Court's 7-2 decision strengthening and expanding *Batson*'s reach was written by Justice Samuel Alito, most recently of the Third Circuit Court of Appeals.

The second reason was that the Third Circuit's ruling denying Abu-Jamal's Batson claim undermined both the *Batson* and *Snyder* decisions by placing new restrictions on a defendant's ability to file a Batson claim. The Third Circuit ruling against Abu-Jamal had the effect of creating new law by tampering with a long-established Supreme Court precedent.

As a result, there seemed to be something more than a remote possibility that the Supreme Court would agree to grant Abu-Jamal's writ.

A Writ of Certiorari is a decision by the Supreme Court to hear an appeal from a lower court. Supreme Court justices rarely give a reason why they accept or deny Cert. Although all nine justices are involved in considering Cert Petitions, it takes only four justices to grant a Writ of Certiorari, even if five justices are against it. This is known as “the rule of four.”

Despite needing only four votes to have his Batson claim argued, the Supreme Court on April 6, 2009 tersely denied Abu-Jamal's request for a writ. The so-called “liberal block” of Justices Stevens, Ginsberg, Souter, and Breyer disintegrated, yielding to the awesome political power of the “Mumia exception.”

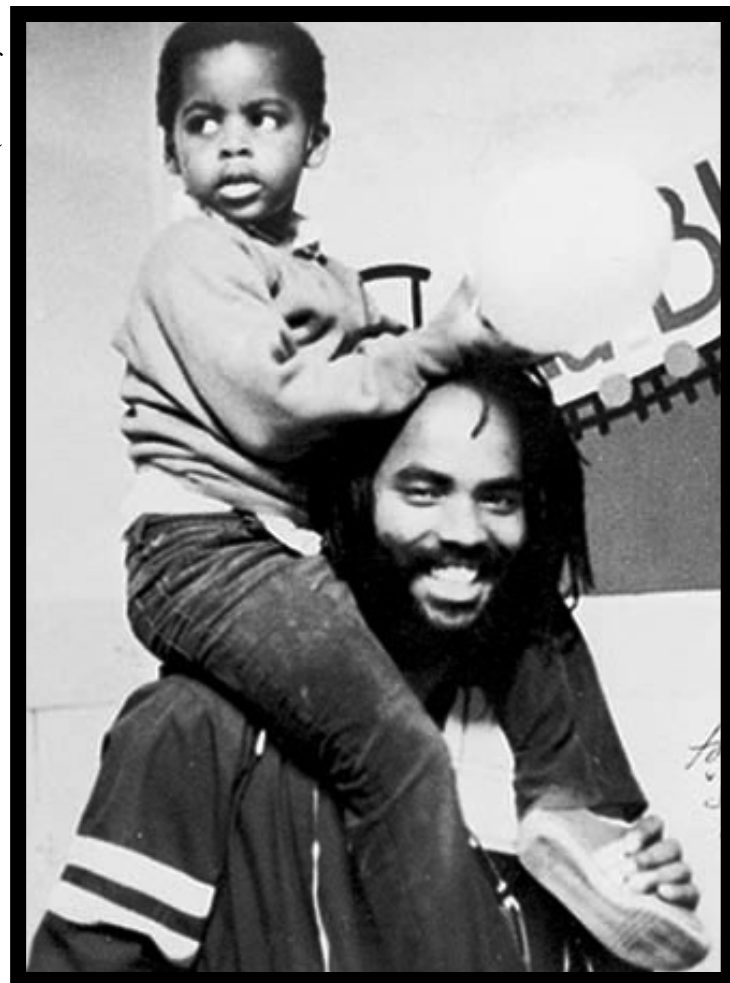


PHOTO: Mumia, before his arrest, with his son Mazi.

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**Interview with filmmaker Johanna Fernandez**

row, in light of the travesty of his case. Mumia responded by saying “I don’t believe in Martyrdom.” This statement still lingers with me today and it strongly influenced the movie we went on to make.

Mumia has been unrelentingly demonized and persecuted by the state as “cop killer” and iconized by many as the Che Guevara of our time, but in that moment in the classroom, Mumia reclaimed his humanity. That day we learned that given the choice between icon and father, Mumia would have chosen to enjoy life at home.

Before long, we learned that a black filmmaker from Philadelphia, Tigre Hill, would soon release his film on Abu-Jamal’s case, *The Barrel of a Gun*. That movie was supported by the Philadelphia PD and its union, the Fraternal Order of Police (FOP). I had envisioned a film about Mumia’s political and intellectual trajectory, but we pivoted to make a film about the case that would challenge *The Barrel of a Gun* in the public sphere.

Eventually we screened the film in Philadelphia at the National Constitution Center to much attention and acclaim on the same day that *The Barrel of a Gun* premiered.

**JJ:** *How did you decide who to interview?*

**JF:** Influenced by the film *Crossing Arizona*, which tracked the contending worldviews of immigrants crossing the US-Mexico border and the minutemen—a white supremacist vigilante militia known for shooting immigrants at the border—the *Justice on Trial* film crew set out to amplify the similarly polarized sides in Mumia’s case.

We talked to the police and politicians who staked their careers on Law-and-Order policies that brought us the demonization in the public sphere of Mumia and other sixties-era political prisoners; militarized policing; and mass incarceration.

But we were also interested in talking to Mumia’s family to learn about the case through the lens of familial intimacy.

**JJ:** *Can you please tell us about your interview with Mumia’s sister, Lydia Barashango?*

**JF:** We were fortunate to have interviewed Lydia Barashango, Mumia’s beloved sister who was battling late-stage cancer. As I sat before this powerhouse of a truth teller, I was shaken to my core. At the last minute, Lydia decided to do the interview without a headdress to cover her fallen hair—the evidence of cancer.

She had borne everything, and she would bare everything.

The world has heard little from the Black women in Mumia’s life.

Lydia described the rich and beautiful family history and life from which Mumia was torn at the time of his incarceration when he was twenty eight and half years—the exact number of years he spent on death row.

She told the film crew of *Justice on Trial* that having her beloved brother ripped from her had affected her at the cellular level. To illustrate Mumia’s character, she told us a story about Edith, their mother. Edith was orphaned as a child and didn’t easily welcome physical displays of affection. But that was no barrier for Mumia. Of all her children, Lydia explained, it was he who brought affection to Edith’s life. Mumia would “grab her up and kiss her,” while the slight, 90-pound Edith fruitlessly shooed him away with “Boy, whatcha doin?.”

Mumia also had a doting father who worked to nurture in him a love of books. Lydia also told of

Mumia’s children, his own and adopted, with whom he played, piled onto his bike, and on whom he doted like his father had doted on him. That was life before Mumia’s nightmare began on Dec. 9, 1981.

**JJ:** *Why do you feel the story of Mumia’s family life is important to tell?*

**JF:** As Lydia continued to share with us intimate details of her brother’s warmth and affection. I couldn’t stop thinking of Mumia’s remarks in the classroom. Those who discover Mumia’s case come to see him as an icon.

As Lydia continued to tell stories of intimacy, I came to understand more deeply that the United States has gotten away with imprisoning so many black and brown people because the media, politicians, and police have depicted us as lone actors—a menace to society—disconnected from home, community, and a network of family and friends.

As I listened, Lydia had already become the heartbeat of a movie that had not yet come into being. And she did.

Lydia told us, also, that the Fraternal Order of Police needed Maureen Faulkner to play the “grieving white widow piece” because otherwise “they wouldn’t have a stone to stand on.”

Although Maureen is much older now, and remarried as Maureen Popovitch, she has been carefully and consistently depicted in the media as a young, vulnerable and distressed, white widow who fell prey to Black radical violence.

Absent from public discourse, however is the anguish suffered by Mumia’s wife, Wadiya Abu-Jamal, who from the moment of Mumia’s arrest began to release press statements challenging the pre-trial demonization of her husband by the media.

When we asked Lydia what she would tell Maureen Faulkner, she suggested that justice for Daniel Faulkner and justice for Mumia Abu-Jamal depend on an uncompromising commitment to facts, due process, and truth: “Justice for Maureen Faulkner is tied to finding out who killed Officer Daniel Faulkner. Mumia is not that person.”

**JJ:** *Which leads us to the issue of who actually shot Officer Faulkner.*

**JF:** Yes, perhaps the most startling revelations of our interview, was Lydia’s testimony about Kenneth Freeman.

On the night that Policeman Daniel Faulkner and Mumia were shot, there were four persons at the crime scene: Billy Cook who is Mumia’s Brother, Officer Daniel Faulkner, Mumia Abu-Jamal and Kenneth Freeman.

The presence of Kenneth Freeman, the fourth person at the crime scene, is one of the least discussed facts in Mumia’s case.

**JJ:** *So how did these people converge in the same place and why has the presence of Kenneth Freeman been suppressed all these years?*

**JF:** The answer here is complex, but the first reason is linked to police and prosecutorial misconduct and corruption.

In the early morning hours of December 9, 1981, Billy Cook was stopped by Officer Faulkner for an alleged traffic violation. Billy was driving home



PHOTO: Johanna Fernandez speaks at a Mumia demonstration in Philadelphia on Nov. 9, 2010. Photo by the Jamal Journal’s Joe Piette.

from work. Soon that exchange escalated. The police started hitting Billy Cook repeatedly over the head sometime after Billy got out of his Volkswagen.

Presumably, the officer would have been concerned about the other person traveling with Billy, seated in the front passenger’s side—Kenneth Freeman, with whom Billy owned a newsstand in downtown Philadelphia.

According to Lydia, Billy and Kenny were close, inseparable in fact, like brothers, “they hung.” The two men had just closed up for the night before they were stopped by Officer Faulkner whom they knew from previous, numerous unsavory encounters.

During the altercation between Billy and Officer Faulkner, Mumia happened to be dropping off a passenger at a nearby club, when he recognized that the person being beaten was Billy. Mumia got out of his cab and ran through a parking lot to aid his brother.

Mumia was already a rising-star journalist who had recently won the coveted Columbia University, Edward Howard Armstrong prize in broadcasting for his report on the Pope’s visit to Philadelphia—but he was moonlighting as a cabdriver to make ends meet.

Out of that encounter, the police officer was shot and killed. Mumia was found semi-conscious, sitting nearby with a bullet from Faulkner’s gun in his stomach. And the gun that Mumia had recently acquired after having been held-up while driving the cab, was allegedly found nearby.

According to Lydia, she and her family had always suspected that Kenneth Freeman killed Daniel Faulkner.

**JJ:** *Why do you think Lydia waited so long to publicly talk about Kenneth Freeman?*

**JF:** What I discovered over the course of many years interviewing different people connected to this case is that Black people in Philadelphia’s Black working-class neighborhoods carry an epic code of honor. They don’t snitch. And that’s the second reason why Freeman does not figure prominently in the narrative of what happened that night.

**JJ:** *So how do we know that there was a fourth person at the crime scene and that the person was Kenneth Freeman?*

**JF:** Photographs taken by an independent photojournalist—Pedro Polakoff, the first person to arrive at the crime scene—point to a fourth person at the scene. Several of the Polakoff photos show Officer Faulkner’s hat sitting on top of Billy’s car, right above the passenger’s seat. This suggests that the officer had a conversation with the passenger.

Significantly, Pedro Polakoff told German author Michael Schiffmann that when Polakoff was present at the

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*Interview with filmmaker Johanna Fernandez*

crime scene, all the officers present expressed the firm conviction that the shooter had been the passenger in Billy Cook's VW, who they believed to be Mumia. But of course, it is undisputed that Mumia had been parked across the street and was not the passenger in Billy Cook's car.

At least four witnesses interviewed by the prosecution said they saw one or two black men running away from the crime scene immediately after they heard gun shots.

Moreover, within hours of the shooting, a driver's license application for Arnold Howard (a friend of Billy Cook and Kenneth Freeman) was found in Officer Faulkner's shirt pocket, leading the police directly to Freeman.

At Mumia's 1995 PCRA Hearing, Arnold Howard testified that he had loaned his license application to Kenneth Freeman, and that on the morning of Dec. 9, 1981, both Howard and Freeman were brought in for a police lineup where Freeman was actually identified as the shooter.

**JJ:** *So Mumia's defense never knew that Arnold Howard's driver's license application was found in Officer Faulkner's front shirt pocket?*

**JF:** Amazingly, this key piece of exculpatory evidence was hidden from the defense and jury during Mumia's trial, first by police inspector Alfonso Giordano, and later, at trial, by Prosecutor Joe McGill.

In a flagrant example of perjury and prosecutorial misconduct, McGill is on record acknowledging the presence of Kenneth Freeman during Billy Cook's trial (which happened almost concurrently with Mumia's) while concealing Freeman's presence at Mumia's trial.

But wait, when it comes to the case of Mumia you can't really make up the level of intrigue, violence, corruption, and gangsterism exhibited by those in power. Five days after Faulkner's death, the newspaper kiosk co-owned by Billy Cook and Kenneth Freeman was burned down, Freeman told the Philadelphia Inquirer "there was no question in my mind that the police are behind this." The same article quoted a police officer who suggested that police were involved.

And three years after Mumia's trial, on May 13, 1985—the night the Philadelphia police bombed the MOVE House with a military grade explosive, shot at fleeing occupants, and burned down the entire city block — Kenneth Freeman was mysteriously found dead in a parking lot, bound and gagged with a needle in his arm. The coroner reported heart failure as the cause of death.

Lastly, in his 2008 book, *The Framing of Mumia Abu-Jamal*, author J. Patrick O'Connor, argues that Kenneth Freeman, not Abu-Jamal, actually killed Police Officer Daniel Faulkner.

## From The Archives: Linn Washington Jr. Reviews "The Framing of Mumia Abu-Jamal"

*(This article has been edited for length. It was first published as "New Frame On Framing By Police" on June 27, 2008)*

Many Philadelphians rudely reject the premise meticulously detailed in the new book by veteran journalist J. Patrick O'Connor: police and prosecutors framed Mumia Abu-Jamal placing an innocent man on death row.

O'Connor provides solid proof for his premise from the very place considered by those convinced of Abu-Jamal's guilt as their holy-writ: the official transcripts of court proceedings in this case sparking outrage internationally.

O'Connor read the thousands of pages of transcripts from trial proceedings in 1982 and 1995 during the research phase for his easy-to-read book "The Framing of Mumia Abu-Jamal" (Lawrence Hill Books 2008).

Carefully citing trial proceedings, O'Connor's book lists odious instances of wrongdoing by police and prosecutors — accomplished with judicial complicity.

"From the beginning of this case, it was corrupt. It was a railroad job," O'Connor said recently during a reading/book signing at a small venue on Baltimore Ave in West Philadelphia sponsored by the organization, Journalists for Abu-Jamal.

"I wrote the book to show not only that Mumia did not kill Officer Faulkner but to show how and why they framed Mumia," said O'Connor who lived in the Philadelphia area at the time of the brutal December 1981 crime at the heart of this controversial case.

In 1981, O'Connor, currently editor and publisher of Crime Magazine, worked as an associate editor of TV Guide then based in a suburb of Philadelphia.

Rude rejection in Philadelphia of ever mounting evidence of Abu-Jamal's innocence is one reason why Philadelphia's newspaper from dailies to weeklies have ignored O'Connor's book despite lavishing coverage on the anti-Abu-Jamal book released late last year co-authored by the widow of Officer Faulkner.

"The reception for my book has been pretty good everywhere but in Philadelphia," O'Connor said.

"The day after my book came out I came to Philadelphia and tried to talk with newspapers. I thought they would be interested in a book with a different angle," O'Connor said.

### Hearing Abu-Jamal on the Radio

Author Pat O'Connor said he remembers listening regularly to Abu-Jamal's memorable reporting on WHY-FM while driving to work.

"I never heard reporting like he did. He has such a distinctive voice," said O'Connor whose journalism career includes reporting for an international news service, editing a city magazine and owning an alternative weekly newspaper.

O'Connor's initial interest in the Abu-Jamal case arose from what he considered the seeming incon-

gruity of a journalist whose work he respected being arrested for murder.

"When I heard of his arrest, it didn't seem right to me...but I bought the line because the papers in Philly had him convicted by the second day after his arrest," O'Connor recalled during an interview last Thursday.

### Police, Prosecutorial, and Judicial Misconduct

Low-ball tactics by police, prosecutors and judges render Abu-Jamal's conviction unjust, O'Connor contends in his book.

"The DA's Office withheld evidence that a driver's license application found in Faulkner's shirt pocket shows someone else was at the crime scene," O'Connor said during his presentation last week.

O'Connor contends Officer Faulkner's killer was a man named Kenneth Freeman, the business partner and inseparable, life-long friend of Abu-Jamal's brother. Officer Faulkner's stopping of the brother's car for an alleged traffic violation led to the fatal shooting.

The owner of that license application told police hours after the fatal shooting that he loaned the document to Freeman.

Eyewitnesses told police Faulkner's shooter fled, providing descriptions fitting Freeman.

"Prosecutor's are supposed to release evidence of innocence," O'Connor said citing legal rules.

Eyewitnesses told police that the passenger in the brother's car shot Faulkner.

Even the prosecution's prime witness at Abu-Jamal's murder trial, a prostitute name Cynthia White, testified in a prior trial that there was a passenger in the brother's car.

At Abu-Jamal's trial, the prosecutor got White to change her prior testimony about the presence of the passenger, a tactic Pat O'Connor calls improperly deceiving the jury.

The suspicious death of Kenneth Freeman shortly after the 1985 MOVE bombing remains a mystery. O'Connor questions why Philadelphia authorities failed to fully investigate the death of Freeman who was found naked in a secluded area. Authorities closed the case on Freeman's death as a routine heart attack.

### Conclusion

Pat O'Connor said he began thoroughly investigating the Abu-Jamal case after Amnesty International began releasing reports questioning the fairness of Abu-Jamal's conviction.

Abu-Jamal's imprisonment is "a clear cut case of monumental miscarriage of justice," O'Connor said.

**--Linn Washington Jr. is an award-winning columnist for the Philadelphia Tribune who has covered the Abu-Jamal case since December 1981.**

## From The Archives: Under Pressure, Yale RebLaw Conference Rescinds Key-note Offer to Philly DA; Instead Invites Political Prisoner Mumia Abu-Jamal

*(This press statement was released by Workers World on February 1, 2019.)*

Cambridge, Mass. — Organizers of the Rebellious Lawyering (RebLaw) conference at Yale Law School rescinded a speaking invitation to Philadelphia District Attorney Larry Krasner. The celebrated "progressive" DA was scheduled to be one of the keynote speakers at the 25-year-old conference on the weekend of Feb. 15-16. But earlier this week a coalition of Harvard law students and lawyers wrote to conference organizers, saying that Phila-

delphia prosecutors could not be counted in the tradition of rebellious lawyers. Their impassioned letter condemned DA Krasner's decision to appeal a recent court order that granted Mumia Abu-Jamal the right to re-appeal his conviction. The letter also challenged the notion that a prosecutor could hold that title.

In their letter to RebLaw, they said, "The so-called progressive Larry Krasner is hell-bent on keeping [Mumia's case] out of the appellate process. Larry Krasner was voted into office by the

Black, working-class people of Philadelphia, but in the hour of truth he has upheld the rulings of racist judges [in this case] and is doing the bidding of one of the country's most corrupt and homicidal police forces." ([tinyurl.com/y7vdof43](http://tinyurl.com/y7vdof43))

The signers added, "Prosecutors, those managers of the oppressive state, regardless of the rhetoric they may espouse during a campaign, should not be invited to speak at a conference for Rebellious Lawyering."

Signator Harvard Law student

Anneke Dunbar-Gronke noted, "Krasner will go down in history as the well-meaning, 'progressive' DA who opposed justice in the case of the Nelson Mandela of our time."

Another Harvard Law student, Felipe Hernández, concluded, "The lesson here is that in the mind of a progressive DA, justice is doled out selectively and only when there is no real political risk involved. Thankfully the conference participants will hear from Mumia, an actual jailhouse lawyer — and pinnacle of rebellious lawyering."



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### **Test Shows Key Witnesses Lied at Abu-Jamal Trial; Sidewalk Murder Scene Should Have Displayed Bullet Impacts**

jacketed bullets at the scene (Faulkner's police-issue Smith & Wesson revolver was firing non-jacketed ammunition).

When a photo image of these seven prominent impact sites from the bullets is compared to detailed police crime-scene photos, the absence of similar such marks at the crime scene is obvious. Even the higher-quality photos of the shooting scene that were taken by Pedro Polokoff, a professional news photographer who arrived at the shooting scene within 20 minutes of hearing about it on his police radio scanner (well ahead of the police photographer and crime-scene investigation technicians), show no bullet marks.

The bizarre lack of any sign of other bullets having been fired down at Faulkner raises a grave question about the truthfulness of the two key prosecution witnesses, prostitute Cynthia White and taxi driver Robert Chobert. As recorded in the trial transcript, Prosecutor Joseph McGill made a big point of having Chobert, a young white man, describe during the June 1982 trial exactly what he allegedly saw Abu-Jamal do in shooting Officer Faulkner. He asked, "Now, when the Defendant was standing over the officer, could you show me exactly what motion he was making or what you saw?"

Chobert replied, "I saw him point down and fire some more shots into him."

McGill asked, "Now you're indicating, for the Record, a movement of his right arm with his finger pointed toward the direction of the ground and moving his wrist and hand up and down approximately three, four times, is that right?"

Chobert replied, "Yes."

Cynthia White, for her part, testified that Abu-Jamal "came over and he came on top of the police officer and shot some more times."

If there are no bullet marks around the spot where Faulkner was lying when he was shot in the face, neither of these testimonies by the two prosecution witnesses are remotely credible.

And there is another question. When the protective steel sheet was checked after this gun test, there were deep dents in the metal which were produced by either concrete fragments blown out of the sidewalk or by bullet fragments. Such debris, large and small, would have been embedded in Faulkner's uniform and/or in exposed skin, such as the sides of his head, or underneath his clothes, and yet the coroner's report and a report on the analysis of his police jacket make no mention of concrete, rock or bullet fragments.

One can additionally speculate about why, if there were in fact bullet marks in the sidewalk, police investigators at the scene never identified and marked them off with chalk, and never photographed them, as would be standard procedure in any shooting, not to mention a shooting death of a policeman. Even more curious, investigators did note, and even removed as possible evidence, a bullet fragment found in a door jamb well behind Faulkner's fallen body, as well as gathering up three other minute bullet fragments. These actions show that on the morning of the 1981 shooting investigators were combing the crime scene looking for evidence of bullets. Had there been impact marks in the vicinity of where Faulkner's body was lying, they would surely have noticed them and marked them for evidence.

We provided our gun test result photo, as well as a crime-scene photo showing the spot on the sidewalk where Faulkner's body was found, and where there

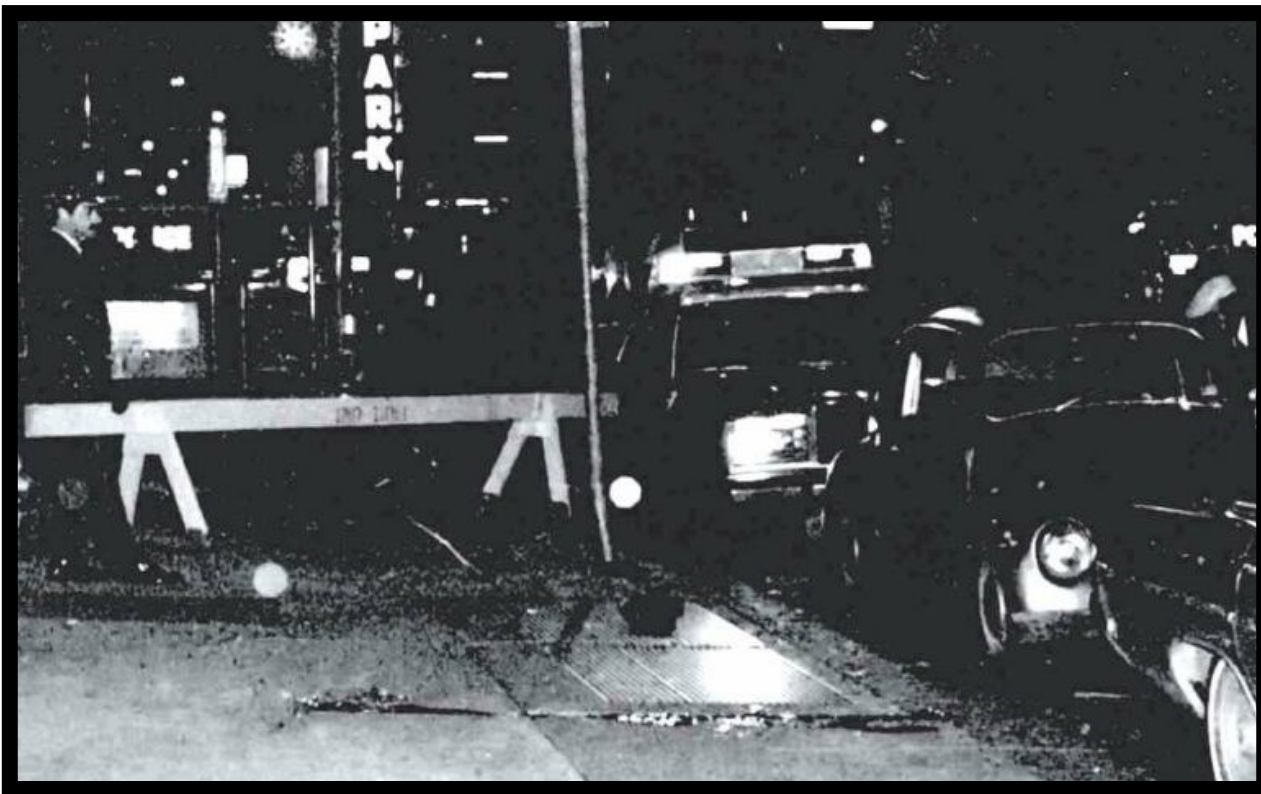


PHOTO: This crime scene photo shows there is no taxi behind the squad car, nor is a taxi in any other photo taken of the Dec. 9, 1981 crime scene. From: [www.thiscantbehappening.net](http://www.thiscantbehappening.net)

should have been bullet marks in the pavement, to Robert Nelson, a veteran photo analyst at NASA's Jet Propulsion Laboratory in Pasadena, California who is on the team that enhances and analyzes the photos sent in from the Cassini Saturn probe. Employing the same technology and skill that he uses in working with those photos from deep space, Nelson subjected the Polokoff photo to analysis and compared it to the gun test photo. Nelson offered the following comment:

"When one shoots a bullet into solid concrete, the concrete shatters at the impact point and creates a lot of scattering surfaces. It contains many micro-cracks that scatter the light more and make the impact area appear to be more reflective. This is apparent in the white circular areas in the test image.

"When the police photograph image is brightness adjusted for comparison with the test image, no obvious reflective zones (shatter-zones) are detected in the concrete surrounding the bloodspot. This result is inconsistent with the argument that several gun shots were fired into the concrete at close range, missing the body of the police officer and impacting the concrete. There are no lighter-colored circular areas suggesting shattering in the crime scene image."

Dr. Michael Schiffmann, a University of Heidelberg professor and author of *Wettlauf gegen den Tod. Mumia Abu-Jamal: ein schwarzer Revolutionär im weißen Amerika* (Promedia, Vienna, 2006), a detailed book about Abu-Jamal released in Europe, questioned a number of experts about the missing bullet marks including the longtime head of ballistics in the medical examiner's office in Tübingen, Germany. This medical examiner told Schiffmann that the notion that police investigators might have somehow overlooked the bullet impact sites around Faulkner's body, or might have failed to recognize them as bullet marks, is "absolute nonsense." That medical examiner says the marks would have been evident and identifiable as being caused by bullet impacts even if Faulkner's blood had flowed over them.

#### **Other Problems With Cynthia White and Robert Chobert's Trial Testimony**

There are, moreover, other good reasons to doubt that White and Chobert were telling the truth, or even that either one of them was actually a witness to the shooting.

Chobert claimed at trial to have pulled his taxi up directly behind Officer Faulkner's squad car, which itself was parked directly behind the Volkswagen Beetle owned by Abu-Jamal's younger brother William Cook, whom Faulkner had supposedly stopped

for a traffic violation. Though the trial judge, Albert Sabo, withheld this information from the jury, Chobert at the time of the shooting admitted to the court that he was driving his cab illegally on a license that had been suspended following a DUI conviction. He was also serving five year's probation for the crime of felony arson of an elementary school. Under such circumstances, one has to ask if such a driver would have deliberately parked his cab behind a police vehicle, where there was a risk he could have been questioned, arrested by the officer, and possibly even jailed for violating conditions of his probation.

In any event, there also are no crime-scene photos that depict a taxi parked behind Faulkner's squad car. Indeed, the official police crime photos, as well as those taken even earlier by Polokoff, show no taxi behind Faulkner's car. Chobert's cab's absence from crime scene photos raises an inescapable issue: either Chobert did not park behind Faulkner's patrol car as he claimed in sworn trial testimony, or police removed his car less than 20 minutes after arriving on the scene and before investigators and a department photographer had gotten there...an action constituting illegal tampering with the crime scene.

Further raising questions about whether Chobert was actually where he claimed to have been during the shooting, a diagram of the crime scene drawn by Cynthia White, plus a second one drawn by a police artist following her instructions, show no taxi, though they do show, in front of Cook's VW, the extraneous detail of a Ford sedan that played no role at all in the case. No other witness at the trial except for White ever testified to having seen Chobert's taxi. Furthermore, if Chobert had witnessed the shooting while sitting at the wheel of his cab behind Faulkner's squad car, as he testified, his view of the shooting, which took place on the sidewalk on the driver's side of the parked cars, would have been blocked by both Faulkner's and Cook's parked vehicles. Making his alleged view even more problematic, it was dark at the time, Faulkner's tail lights were on, and his glare-producing dome lights were flashing brightly.

As for Cynthia White, though she claimed to have been standing on the sidewalk by the intersection of 13th and Locust, just feet from the shooting, no witness at the trial, including Chobert, claimed to have seen her there. Furthermore, White's story about the shooting changed dramatically over time, as she was repeatedly picked up for prostitution, and each time, was brought down to the Philadelphia Police Homicide Unit, where she was questioned again and again about what she had seen. In her first interview with detectives, she said she saw Abu-Jamal shoot the

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officer several times before Faulkner fell to the ground. A week later, she said it had been one or two shots that were fired before the officer fell to the ground. A month later, in January, 1982, she was talking about only one shot being fired before Faulkner was on the ground—the version of her account that she eventually presented at trial.

Given the already problematic nature of both Cho-berth's and White's sworn testimony, this new gun test evidence demonstrating that there certainly should have been obvious bullet marks located around Faulkner's body if, as both these "eye-witnesses" testified under oath, he had been fired at repeatedly at point blank range by a shooter straddling Faulkner's prone body, the whole prosecution story of an execution-style slaying of the officer by Abu-Jamal would appear to be a prosecution fabrication, complete with coached, perjured witnesses, undermining the integrity and fairness of the entire

trial, as well as the subsequent death sentence.

### **The Lawyers Respond**

Told about the results of their gun test, and asked four questions to explain the lack of photographic evidence or testimony about bullet impact marks in the sidewalk around Faulkner's body, the Philadelphia DA's office offered only a non-response, saying, "The murderer has been represented over the past twenty plus years by a multitude of lawyers, many of whom have closely reviewed the evidence for the sole purpose of finding some basis to overturn the conviction. As you know, none has succeeded, and Mr. Abu-Jamal remains what the evidence proved – a murderer."

Robert R. Bryan, lead attorney for Abu-Jamal, informed of the results of the gun test, and shown a copy of the resulting marks on the concrete, said, "Wow. This is extraordinarily important new evidence that establishes clearly that the prosecutor and the Philadelphia Police Department were engaged in presenting knowingly false testimony to a jury in a case involving the life of my client. The evidence not only demonstrates the falsity of the prosecu-

tion's story about how the shooting occurred, and of the effort to portray the shooting to the jury as an execution-style slaying. It raises serious questions as to whether either of the two key witnesses actually were witnesses to the shooting."

Courts – federal and state – have over the years rejected all evidentiary challenges and all but one procedural error in the Abu-Jamal case, despite granting legal relief on the same issues as those raised by Abu-Jamal in dozens of other Pennsylvania murder cases—including a few cases involving the murder of police officers.

In contrast to these consistent court rulings declaring Abu-Jamal's trial to have been fair, the respected organization *Amnesty International* and other entities and legal experts contend Abu-Jamal did not receive a fair trial in part due to improprieties by police and prosecutors.

Amnesty International's seminal February 2000 investigative report on this case stated, "The politicization of Mumia Abu-Jamal's case may not only have prejudiced his right to a fair trial, but may now be undermining his right to fair and impartial treatment in the appeal courts."

## **Even Before Dave Lindorff and Linn Washington's 2010 Ballistics Test, There Were Many Other Well-Documented Problems With the Ballistics Evidence Used to Convict Mumia Abu-Jamal at the 1982 Trial**

*The arresting officers claimed that when they arrived at the scene, Mumia's legally registered .38 caliber, Charter Arms revolver (which Mumia says he carried while driving his taxi, after he was robbed several times on the job) was laying at his side with five spent cartridges.*

### **Amnesty International Says Missing "Wipe" and "Sniff" Tests Are Deeply Troubling**

Police never officially performed the standard "wipe test" for gunshot residue on Mumia's hands and clothing, or the "smell test" on his gun, which Amnesty International has criticized as "deeply troubling." J. Patrick O'Connor, author of *The Framing of Mumia Abu-Jamal*, writes that these tests "are so routine at murder scenes that it is almost inconceivable the police did not run them. It is more likely that they did not like the results."

### **.44 Or .38 Caliber Bullet?**

The original medical examiner's report (never seen by the 1982 jury) stated that the deadly bullet was a .44 caliber. Later, police ballisticsian Anthony Paul concluded that the bullet was actually a .38 caliber.

Veteran Philadelphia journalist and Temple University professor, Linn Washington Jr, argues that the .44 caliber notation "is significant in showing the shallowness of the case against Abu-Jamal. A .44-calibermagnum bullet is more than twice the size of a .38-caliber bullet. This size difference between these two bullets is clear to the naked eye of anyone irrespective of their level of understanding of bullets and/or ballistics. Remember, in Philadelphia, Medical Examiners perform hundreds of gun shot death autopsies annually, constantly seeing various size bullets, thus being easily able to identify bullets."

### **Particular Rifling Traits**

Even if the medical examiner actually made a legitimate mistake, the evidence presented about the alleged .38 bullet is also contradictory and inconclusive. "Particular rifling traits" identify a bullet as coming from one specific gun. Police experts concluded that the fatal bullet was too damaged to link the particular traits to Mumia's gun.

### **General Rifling Traits**

General traits can only link a bullet to a particular type of gun. In his report, police ballisticsian Anthony Paul first identified the bullet's general traits as "indeterminable."

Contradicting himself in the same report, Paul later noted a general trait: a "right-hand direction of twist." Then, Paul's 1982 trial testimony went even further by identifying another general trait never mentioned in his written report: "8 lands and 8 grooves." So after deeming the general traits indeterminable, Paul then alleged two general traits that served to further implicate Mumia's gun type.

### **"Multiples of Millions"**

Even if these general traits cited by Anthony Paul did exist on the bullet, it was still not a reliable link to Mumia's gun. Paul was asked at the 1982 trial, "approximately, how many millions of guns have eight lands and grooves and how many would provide this bullet?" Paul answered that it could have come from "multiples of millions," of guns, including guns not manufactured by Charter Arms.

### **The Behavior of an Innocent Man**

In 2001, Mumia's defense filed two affidavits demanding that the fatal bullet be retested by modern methods to determine whether it came from Abu-Jamal's gun. In one affidavit, medical examiner Robert H. Kirschner states: "Newer technology may provide evidence as to the class or individual characteristics of the bullet specimen recovered from Officer Faulkner permitting a determination of whether or not it was fired from the recovered Charter Arms revolver." Would a guilty man have called for a new ballistics analysis of the fatal bullet?

### **Downward trajectory of the bullet in Mumia contradicts DA's shooting scenario**

At the 1982 trial, the prosecution argued that Mumia had been shot in the chest from below by a falling Officer Faulkner. However, the bullet (officially linked directly to Faulkner's gun) entered Mumia's chest at a downward trajectory, suggesting that he was actually shot from above. Attempting to explain the bullet's problematic downward trajectory,

the prosecution claimed that the bullet ricocheted off bone within Mumia's torso and then tumbled downward.

Challenging this far-fetched theory, medical examiner John Hayes testified at the 1995 PCRA hearings, that x-rays proved the bullet traveled without any deflection.

This downward trajectory strongly suggests that Abu-Jamal was actually shot while running, bent slightly forward, from across the street towards Faulkner, who was standing above, on the curb.

### **Trajectory of bullet shot in Faulkner's back contradicts the DA's theory**

*(see accompanying ballistics diagrams on pg 34-35)*

The bullet shot into Faulkner's back traveled upwards at a 33 degree angle, exiting below his throat. This bullet has never been definitively recovered. In fact, neither the bullet, copper bullet jacket, or bullet fragments found at the scene (as shown in the diagrams on the left) were definitively tied to either Faulkner's gun or Abu-Jamal's gun.

German author Michael Schiffmann argues in his 2006 book, *Race Against Death*, that only the small bullet fragment found inside the 1234 Locust vestibule (weighing 39.4 grains) could have possibly related to the shot through Faulkner's back. Notably, this fragment traveled southwest, in sharp contrast to the southeast direction of Mumia's likely approach.

Furthermore, there were no bullets or fragments found east down Locust—where it would have been had Mumia shot Faulkner in the direction he was likely approaching. Thus, Schiffmann writes with "a certainty of almost 100 percent" that Mumia did not fire the shot into Faulkner's back.

Schiffmann concludes that the bullet was actually fired by a third person, who was on the curb, behind Faulkner, as Faulkner faced northwest towards Mumia.

Schiffmann argues that this "third person" was Billy Cook's friend and business partner, named Kenneth Freeman, who was in Cook's car when it was pulled over, and who shot Faulkner in response to Faulkner first shooting Mumia.



# From The Archives: Hans Bennett on German Author Michael Schiffmann's 2006 Book "Race Against Death," Featuring a New Ballistics Analysis, the Polakoff Photos, and Why Kenneth Freeman Was the Actual Shooter

(This November, 2006 article was first published as "Freiheit für Mumia Abu-Jamal! German Book Reveals New Evidence in Death-Row Case.")

"The history of the criminal case of Mumia Abu-Jamal, which is by now almost 25 years old, has been characterized by bias right from the start: against a black man whom the court denied a jury of his peers, against a member of the economic underclass who did not have a real claim to a qualified defense, and against a radical, whose allegedly dangerous militancy obliged the state to eliminate him from the ranks of society."

So writes German author Michael Schiffmann in his new book *Race Against Death. Mumia Abu-Jamal: a Black Revolutionary in White America* (an expansion of Schiffmann's PhD dissertation at the University of Heidelberg), just released in Germany this past month.

In 1982, Abu-Jamal was convicted of killing white Philadelphia police officer Daniel Faulkner and sentenced to death in a trial that Amnesty International has declared a "violation of minimum international standards that govern fair trial procedures and the use of the death penalty."

Schiffmann writes that a third person (not Abu-Jamal or his brother Billy Cook) most likely shot and killed police officer Daniel Faulkner on the morning of December 9, 1981. This third person was Kenneth Freeman (Billy Cook's friend and business partner) who--according to the available evidence--was a passenger in Cook's car. Freeman likely shot him in response to Faulkner shooting Abu-Jamal in the chest, and was therefore the black male that six eyewitnesses reported to see fleeing the scene moments before other police arrived.

*Race Against Death* asserts that ballistics almost certainly rule out Abu-Jamal firing the first shot (into Faulkner's back), and that much evidence shows that he also didn't fire the lethal bullet to Faulkner's head. However, in the very unlikely scenario that Abu-Jamal did shoot Faulkner, it would have been a response to being shot himself and would therefore be justified self-defense.

MIT professor Noam Chomsky (a long-time supporter of Abu-Jamal) writes that Schiffmann's "careful and scrupulous inquiry into the events and the available evidence brings to light much that is new or was obscured," and "raises understanding of this painful and critically important case to a new level. Not only his comprehensive research, but also his penetrating evaluation of the background and

import, should be the basis for further engagement in the case itself and the intricate array of issues in which it is embedded."

Building upon evidence presented in the other two books written about Abu-Jamal's case (Dan Williams' 2001 *Executing Justice* and Dave Lindorff's 2003 *Killing Time*), Schiffmann boldly presents both new evidence and an entirely original analysis of previous ballistics evidence.

## New Witness: Photographer Pedro Polakoff

In May, 2006, Schiffmann discovered two photographs on the Internet that were taken by the only press photographer immediately present at the 1981 crime scene, Pedro Polakoff. The photographer arrived within 12 minutes of hearing about the shooting on the police radio and about ten minutes before the Mobile Crime Unit (responsible for forensics and photographs) arrived. This unit had still not taken any photos when Polakoff left after 30-45 minutes at the scene.

Upon contacting Polakoff, Schiffmann learned that three of his 31 original shots were published in Philly newspapers at the time, and five others were lost. Schiffmann told Z Magazine that he "published five of the 26 remaining photos to show the following three points":

\* "The cops manipulated evidence and supplied the trial court with stuff that was simply stage-managed. On Polakoff's photos, P.O. Faulkner's police hat at first is clearly on the roof of Billy Cook's VW, and only later on the sidewalk in front of 1234 Locust where it was photographed by the police photographer who arrived 10 minutes after Polakoff!

\* "In court Police Officer James Forbes claimed that he had 'secured' the weapons of both Faulkner and Mumia without touching them on their metal parts in order to not destroy potential fingerprints. However, in the single photo reprinted in the book you can see that Forbes is touching the weapons on their metal parts, and quite a few of Polakoff's other photos make it clear that Forbes touched and smudged these weapons all over, destroying any potential fingerprint evidence that may have been on them.

\* "The second-most important prosecution witness, cab driver Robert Chobert, simply was not parked in the spot, allegedly right behind Officer Faulkner's police squad car, where he claimed to have been and from where he claimed to have observed Mumia fire the shot that killed the officer."

Polakoff's observations don't stop there. Schiff-



mann writes: "According to Polakoff, at that time all the officers present expressed the firm conviction that Abu-Jamal had been the passenger in Billy Cook's VW and had fired and killed Faulkner by a single shot fired from the passenger seat of the car."

"Polakoff further reports that this opinion on the part of the police about what had happened was apparently based on the testimony of three witnesses who were still present at the crime scene, namely, by the parking lot attendant in charge of the parking lot on the Northern side of Locust Street, by a drug addicted woman apparently acquainted with the parking lot attendant, and another woman. As Polakoff later heard from colleagues in the media, the parking lot attendant had disappeared the day after, while the drug-addicted witness died a couple of days later from an overdose. Whatever it was that these witnesses saw or did not see, we will probably never know--the interesting fact in any case is that neither of them ever appeared in any report presented by the police or the prosecution."

Polakoff told Schiffmann that he was simply ignored when he repeatedly contacted the DA's office to give them his account--and his photos--of the crime scene.

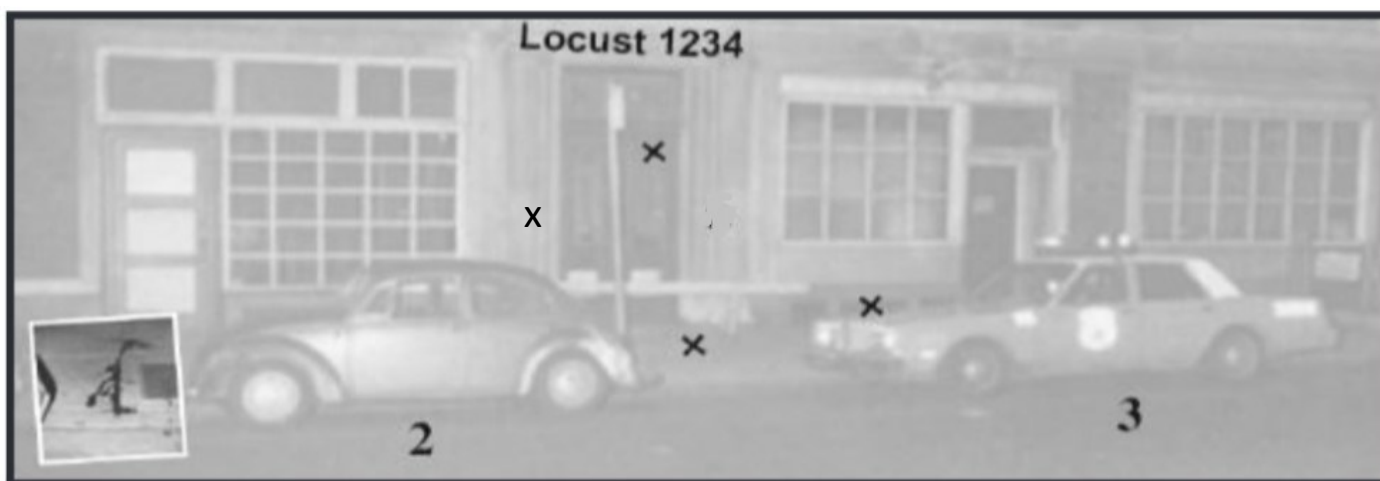
Schiffmann has informed Mumia's lawyers about Polakoff's evidence -- who are looking into it further.

## No Bullet Traces in Sidewalk

The prosecution claims that Mumia stood over and shot at Faulkner three to four times (with only one shot hitting him) while Faulkner was lying on his back. Schiffmann asserts that if this was true, there would have had to have been two to three large divots in the pavement (next to Faulkner's body) resulting from the bullets' impact. Since photos and police reports do not reveal any damage or bullet fragments in that location, Schiffmann concludes that the prosecution scenario must be false.

While this "missing divots" observation was publicly revealed in 2001 by Mumia's

*Continued on page 35...*



(1) Inserted police photo at far left of diagram, in front of Billy Cook's VW, designates where Faulkner's body was found (2) Billy Cook's VW (3) Faulkner's police car (The "X"-Marks, From Left to Right) X Entry location of bullet fragment, weighing 39.4 grains, found inside doorway vestibule, 6 ft., 10 in. south of the front door X unexplained copper bullet jacket on sidewalk X .38/.357 whole bullet, weighing 151.3 grains, with officially indeterminable rifling traits, found in the frame of entrance door, 3 ft., 7 in. up from the sidewalk (Schiffmann argues that the bullet is too low and too far away from Faulkner's body, to have exited Faulkner's throat) X 7 small lead fragments, total weight 18.2 grains, found in the lower wall, seven inches up from the sidewalk.



...Continued from page 34:

### Review of Race Against Death by German author Michael Schiffmann

former lawyers, Schiffmann is literally the first writer to investigate this further.

To support the assertion Schiffmann interviewed a German ballistics expert and was told that "such divots couldn't possibly have been overlooked." He concludes: "They were simply not there."

Furthermore, photographer Pedro Polakoff "emphatically denied that there could be any such divots beneath the blood or anywhere else in the area of the sidewalk to be seen on his photos."

After asserting the fraudulence of the prosecution's scenario, Schiffmann goes further and declares that the three prosecution witnesses supporting this scenario must have been lying. Even ignoring previous evidence that witnesses Robert Chobert and Cynthia White falsely testified, "the absence of any bullet traces or bullets in the sidewalk in front of 1234 Locust is irrefutable physical evidence that these two, plus witness Michael Scanlan did not tell the truth at Mumia's trial. By that simple observation a central part of the prosecution's theory is simply blown out of the water -- and new evidence is on the table thereby for the coaching, coercion and manipulation of witnesses."

### Bullet and Fragments at Crime Scene

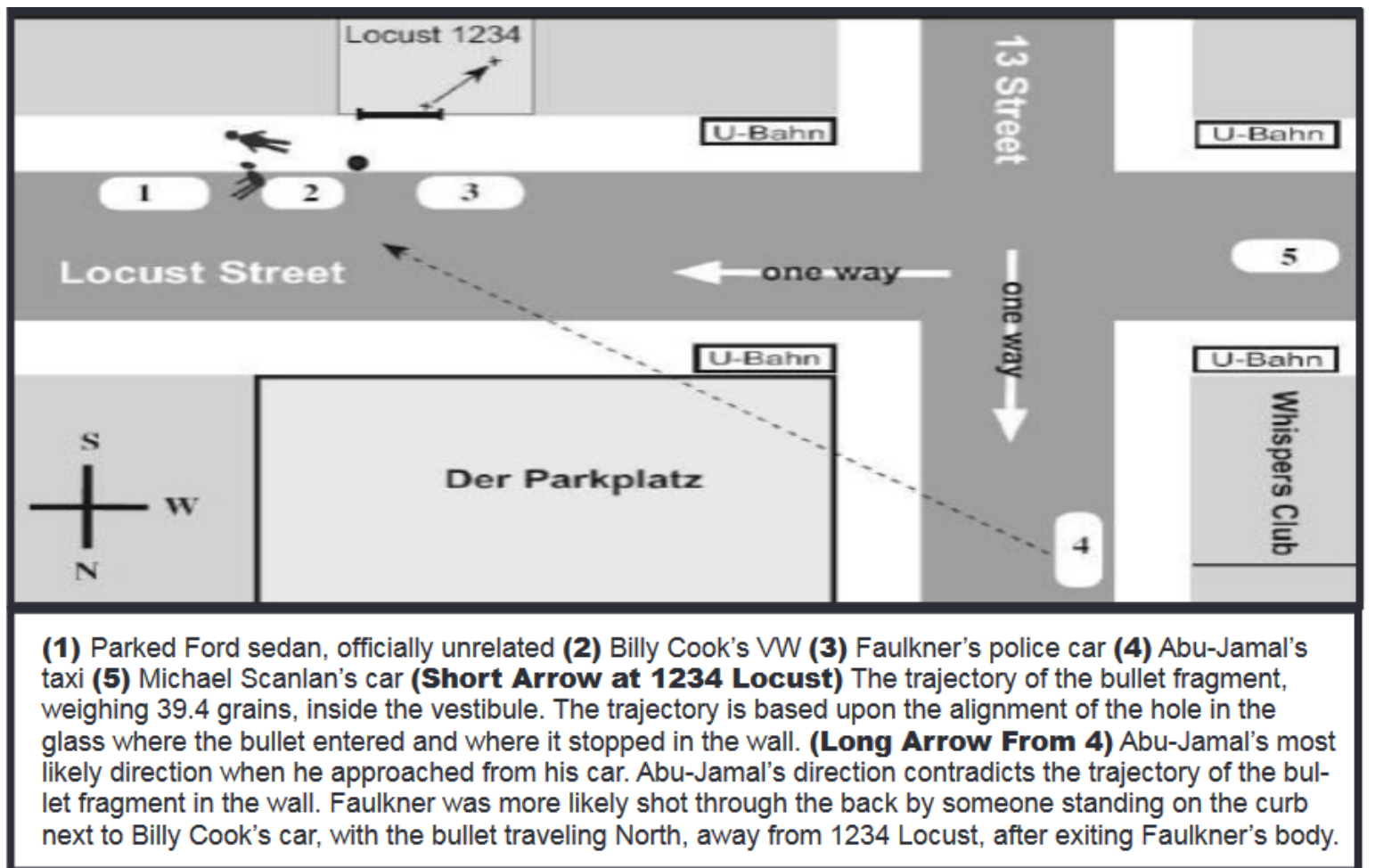
Schiffmann's entirely original ballistics analysis is the most explosive section of *Race Against Death*. Researched for more than three years, this chapter analyzes both the unexplained bullet and fragments found in the doorway of 1234 Locust Street and the copper bullet jacket found on the sidewalk (all a full car-length from Officer Faulkner's body).

Most likely the bullet shot into Faulkner's Back (traveling at an upward angle and exiting slightly beneath his throat) came from the sidewalk behind Faulkner as he was facing northwest towards Mumia and towards the parking lot situated at the northeastern corner of the intersection 13th and Locust where Mumia came from. The most logical way for Mumia to approach the scene was diagonally from Northwest to Southeast -- but the only bullet fragment found in or around 1234 Locust that could have had anything to do with the shot in Faulkner's back traveled from Northeast to Southwest, at a sharp angle from where Mumia was approaching the scene! Schiffmann shows that even if Mumia had approached the scene in an indirect and awkward way by almost circumventing it first, the bullet fragment in question cannot have come from a shot fired by him at that time.

There was no evidence of any bullet further east down Locust--where it would have been had Mumia shot Faulkner from his more logical approach to the scene from a northwestern direction.

Schiffmann writes in *Race Against Death* that "this evidence shows that the first shot that hit Faulkner did not come from the direction from which Abu-Jamal approached the scene, could therefore not have been fired by Abu-Jamal, and was thus necessarily fired by some third person, a possibility that the prosecution has always adamantly denied."

Schiffmann told me: "The first key point is that Mumia is no murderer. If he shot at all, he shot to



(1) Parked Ford sedan, officially unrelated (2) Billy Cook's VW (3) Faulkner's police car (4) Abu-Jamal's taxi (5) Michael Scanlan's car (Short Arrow at 1234 Locust) The trajectory of the bullet fragment, weighing 39.4 grains, inside the vestibule. The trajectory is based upon the alignment of the hole in the glass where the bullet entered and where it stopped in the wall. (Long Arrow From 4) Abu-Jamal's most likely direction when he approached from his car. Abu-Jamal's direction contradicts the trajectory of the bullet fragment in the wall. Faulkner was more likely shot through the back by someone standing on the curb next to Billy Cook's car, with the bullet traveling North, away from 1234 Locust, after exiting Faulkner's body.

defend his own life, after he intervened at the scene in the first place to protect his brother who had already been beaten bloody."

"Second, it is very unlikely that Mumia even took his gun out of its holster during that fateful night. What if the destruction of fingerprint evidence on Mumia's gun (shown in Polakoff's photos) was not just negligent, but deliberate? It would mean that the police themselves were the ones who drew Mumia's weapon (which had been empty apart from five spent cartridges to begin with) out of his shoulder holster."

### The Third Person: Ken Freeman?

Schiffmann cites six witnesses (including several that were intimidated by police) that saw someone run away before police arrived, and then argues that this third person was most likely Billy Cook's business partner and friend, Kenneth Freeman.

In the 1995 PCRA hearings, it was revealed that Faulkner had a license application in his front pocket (concealed from the defense for 13 years) for Arnold Howard--who testified that he had loaned his temporary (non-photo) license to Kenneth Freeman.

Schiffmann explained to me that "Billy Cook's attorney Daniel Alva told Dave Lindorff (in his book *Killing Time*) that Cook had told him within days after the shooting that Freeman had been with him that night. There wasn't the slightest reason for Alva to do so if it was not indeed true. Lying to journalists doesn't belong to the duties of a defense attorney, and the assumption that a well-respected member of the Philadelphia legal community such as Alva would do so for no apparent reason makes little sense to me."

Returning to his original ballistics analysis, Schiffmann argues: "A person coming out of the passenger seat of Billy Cook's VW would have been ideally placed to fire the shot that hit Faulkner in the back and exited through the region below his throat. Faulkner had on a clip-on police tie that was apparently hit right at that clip (since there was blood and lead on it). The tie was found nowhere near 1234 Locust where it should have been found had Mumia fired that shot in Faulkner's back. Instead, it was on the Northern side of Locust shortly before the intersection 13th and Locust. And this, in turn, means that the shooter must have been on the sidewalk in front of 1234 Locust -- not in the street coming from the parking lot, as Mumia was."

Further supporting Schiffmann's argument are the

mysterious circumstance of Freeman's death. On May 13, 1985 (the same day police firebombed the MOVE organization's headquarters), Freeman was found dead in a parking lot. Likely murdered by police that day, he was found naked, handcuffed and had a drug needle in his arm. Given the impossibility of injecting himself with the needle while handcuffed, the official explanation for the 31-year-old's death (heart attack) seems incredible.

"If Freeman was indeed killed by cops, the killing probably was part of a general vendetta of the Philadelphia cops against their 'enemies' and the cops killed him because they knew or suspected he had something to do with the killing of Faulkner," said Schiffmann.

### Freiheit für Mumia Abu-Jamal!

Noam Chomsky argues that "Mumia's case is symbolic of something much broader . . . The US prison system is simply class and race war . . . Mumia and other prisoners are the kind of people that get assassinated by what's called 'social cleansing' in US client states like Colombia."

Schiffmann also feels that Mumia's case is part of a much larger picture and devotes most of his book to providing a proper historical context. "Determined not to write the typical boring academic tract," Schiffmann told me: "My book's not just about Mumia. His case is important because of the larger legal, political, and social issues that his case exposes. I investigate the US's constitutional tradition, the history of the Civil Rights and Black Power movements, the horrendous history of city development in the US tragically exemplified in Philadelphia, Mumia's extraordinary yet typical history of a Black youth alienated by the false promises the US 'offered' for him as a young man of the wrong color, and finally the development of the US into a virtual police state for many segments of the population."

Schiffmann emphasizes the extreme importance of Mumia's current battle in the courtroom, but feels that solid legal strategy will only go so far in gaining a new trial. The key will be to exert maximum political pressure from the grassroots in Philadelphia and around the world. A "broad, multi-faceted and democratic mass-movement," emphasizing that "Mumia is all of us," must be used to ensure real justice.

Schiffmann concludes: "We have kept Mumia alive. Against the odds, we have won the first stage of an uphill battle. Now we must go on all the way -- and that is to free Mumia Abu-Jamal!"

# From The Archives: The Newly Discovered Polakoff Crime Scene Photos: 20 FAQs

Written in 2007 by Educators for Mumia and Journalists for Mumia

Mumia Abu-Jamal has been on Pennsylvania's death row for over a quarter of a century. His 1982 conviction for the shooting death of Philadelphia Police Officer Daniel Faulkner, has been contested by jurists, human rights organizations, and peoples of conscience the world over.

Even though he is arguably the most famous political prisoner in the United States, his case and struggle for justice distill many of the issues that racially stigmatized groups and others have faced in the United States for decades: police brutality and violence, racist applications of the death penalty, prosecutorial misconduct, suborning of witnesses, and the use of wealth and political privilege in criminal justice systems to service the ideological interests of groups and classes in power.

Within the last year, some 26 photos have been discovered by researcher Dr. Michael Schiffmann of the University of Heidelberg, showing the crime scene where Officer Faulkner was killed.

These photos were offered to police and prosecutors from the beginning, but were never considered at Abu-Jamal's 1982 trial, or in any judicial phase of his struggle for justice thereafter.

Indeed, they were unknown even to Abu-Jamal's defense team, until very recently. To widen public knowledge about these photos and to answer many of the basic questions about them, Educators for Mumia Abu-Jamal and Journalists for Mumia Abu-Jamal have collaborated to produce this document of "21 FAQs about the Polakoff Photos." We stress that while it is important for the public to have knowledge about these photos, and to debate them in the media and public forum, the most important and necessary move is for the court system to give Abu-Jamal a new trial and deliberate officially on this evidence and all evidence that is potentially exculpatory for Abu-Jamal.

## I. FACTS

### 1. *Why are these photos coming out just now, and how were they discovered?*

The photos were discovered by University of Heidelberg linguist and translator, Michael Schiffmann, during an unrelated internet search in late May 2006. Schiffmann first found two photos taken by a freelance photographer, Pedro Polakoff. Later he would have access to over 26 of Polakoff's photos of the crime scene.

Previous researchers and those debating the Mumia case, in court or outside of court, seem to have had no knowledge of these photos until this discovery, and until Schiffmann's later discussion and publication of the photos in his 2006 book, *Race Against Death: The Struggle for the Life and Freedom of Mumia Abu-Jamal* (published only in Germany, with an English manuscript presently available). Educators for Mumia Abu-Jamal (EMAJ) and Journalists for Mumia Abu-Jamal (J4M) have been instrumental in circulating knowledge of Schiffmann's discovery.

### 2. *Is there any chance these Polakoff photos could be fake or doctored?*

Schiffmann has responded to this query directly: "Polakoff has preserved the original negatives, from which the images viewed on the internet were directly scanned, with a negative scanner. As the negatives show, Daniel Faulkner's hat started on the top of the VW, and only later showed up on the sidewalk, where it would then remain for the official police photo. There isn't a scintilla of a doubt about its authenticity, [...] and there isn't the slightest doubt about the time sequence of the photographs, a question that I've gone through with photographer

Pedro Polakoff again and again and again." [1]

### 3. *Who is this photographer?*

Pedro P. Polakoff was a freelance photographer in Philadelphia who got to the crime scene just 12 minutes after the shooting was first reported on police radio, and apparently at least 10 minutes before the Philadelphia Police Mobile Crime Detection (MCD) Unit that handles crime scene forensics and photographs.

### 4. *How could Polakoff get access to the crime scene for these photos?*

Polakoff was himself surprised about how he could move and photograph freely everywhere at the crime scene, even after the PPD Mobile Crime Unit arrived. Polakoff told Schiffmann that it was the "most messed up crime scene I have ever seen." It was completely unsecured, a fact testified to also by Philadelphia journalist, Linn Washington, Jr. [2]

### 5. *How did Schiffmann get his information from Polakoff?*

After the first contact, first by telephone, and then by email with Polakoff, Schiffmann amassed over 60 pages of email notes from questioning Polakoff. He also had over six weeks of other contacts with Polakoff, "without ever revealing more to him," writes Schiffmann, "than the fact that I was working on a book on the case." Only relatively later in the conversations with Polakoff did Schiffmann reveal his own views and suspicions about the prosecutors' version of the case. Schiffmann also has studied Polakoff's many responses at different points during his contacts, and Schiffmann finds that Polakoff is both detailed and consistent each time.

### 6. *What is most important about the 26 Polakoff photos?*

This question must be approached both as a procedural question and as a substantive question. Procedurally, there is the fact that Polakoff offered the 26 photos to the police and DA's Office, and they showed no interest in them. The photos surely never entered the court record of Abu-Jamal's case to be set before a jury's deliberation. Let us grant that photos can enter as evidence in many ways, and a photo which very clearly shows one thing to one person can show something very different to another person, often depending on context (of other evidence, knowledge, personal experience and ideological interests, and so on). Nevertheless, the key procedural point is that the Polakoff photos, which were available and offered to police and prosecutors in both 1981/1982, and in the 1990s, never even made it into the evidentiary record of this case. They were omitted, left out, of all procedures for investigating Officer Faulkner's death.

Substantively, the Polakoff photos enable defense attorneys, and by extension the court, to raise significant reasonable doubt about the basic scenario of Officer Faulkner's death—a scenario that prosecutors constructed to argue for Abu-Jamal's guilt. In light of the Polakoff photos, that scenario could be completely destroyed by attorneys. In particular, testimony for the prosecution about that scenario, provided by Cynthia White, Robert Chobert and Michael Scanlon, becomes incredible. [3]

\* ----- At the 1982 trial of Abu-Jamal, they all testified that the killer stood over the officer who was lying defenselessly on the sidewalk and fired several .38 caliber bullets down at him, one of which hit him between the eyes and killed him instantaneously, whereas the other shots missed.

\* ----- These missing shots would have produced traces in the sidewalk that it would have been im-

possible to overlook, since bullets of that caliber would have left large divots, or even holes with concrete broken away, in the sidewalk.

\* ----- Neither the one police photo of where Faulkner allegedly lay, nor a full nine other Polakoff photos taken of the same area from various angles, show any traces of such shots into the sidewalk.

\* ----- Even if we grant that interpreting photographs can at times be a complex endeavor, the apparent absence of any such divots renders the prosecution witnesses' testimony highly problematic, to say the least.

### 7. *Couldn't the other shots have glanced off the sidewalk or hit at such an angle that they might not have left any trace?*

This is highly unlikely. In the first place, the prosecution witnesses and prosecutors' summary of the crime claim that a killer stood directly above Officer Faulkner straddling him even, and fired downward.

From that angle any missing shots are most likely discharged in a downward direction that would leave divots. In the second place, a highly qualified ballistics expert who was consulted by Schiffmann has informed him that firing .38 caliber bullets in this way would "inevitably" produce divots in the sidewalk. [4] The same point is made in the specialized literature on the subject. Again, this is a new matter that was never heard, or deliberated on, by a jury.

### 8. *Are there other significant problems for the prosecution case raised by the Polakoff photos?*

Yes, many, but two more should be noted, especially. First, the testimony of taxi driver Robert Chobert is further discredited. He claims to have been parked just behind the slain police officer's squad car, with a direct view of the killing. The Polakoff photos show the space behind the officer's car and there is no sign of Chobert's taxi, giving fuller support to the conjecture that his probationary status for a past act of throwing a Molotov cocktail into a grammar schoolyard, and the fact that he was driving his cab without a license on account of repeated DUI violations, might have made him vulnerable to police pressure to say he saw what he didn't see.

Second, the photos raise further questions about police contamination or manipulation of evidence at the crime scene. One Polakoff photo shows police officer Faulkner's hat on the top of the VW he had pulled over, whereas the official police photo, taken later and used at the trial has the hat on the sidewalk where prosecutors say Faulkner was slain (and a later Polakoff photo has it moved to the ground also, which corresponds with the official police photo). Several Polakoff photos show police officer James Forbes at the crime scene holding the recovered weapon in his bare hand, even changing the guns from one hand to another, whereas at trial Forbes had denied touching the guns metal parts for the full one-and-a-half hours he held them. Again, these matters were not heard by a jury.

### 9. *Wouldn't the police and prosecutors be interested in such early photos of the crime scene?*

One would think so. Polakoff reports, however, that the police showed no interest. After Polakoff's photographic work had been so obvious to police at the crime scene in 1981, he expected to be contacted by the police or by the D.A. He was not. Polakoff also phoned the DA's office in 1982. Then, in the 1990s, Polakoff says, "when there was this big fuss about a new trial for Abu-Jamal, I contacted them myself and asked them to get back to me. They didn't even answer me." [5] He was offering them the photos and what he had to say about them. The interest that police and the DA's Office should have

*Continued on page 38...*



Following the publication of Pedro Polakoff's photos in German author Michael Schiffmann's 2006 book "Race Against Death," the photos were next published days before Mumia's May 17, 2007 oral arguments before the US Third Circuit Court., published in the first issue of Journalists for Mumia's newspaper and shown on a large

poster for the May 18, 2007 event where Schiffmann presented Polakoff's photos while in Philadelphia for the May 17 oral arguments..

On Oct. 24, 2007, The SF Bay View, a national Black newspaper published one of Polakoff's photo, the photo of Officer James Forbes holding the two guns in his barehand, to accompany an article by Black Commentator columnist David A. Love.

Just weeks before Maureen Faulkner and Michael Smerconish's appeared on the Dec. 6, 2007 episode of NBC's Today Show, a cam-

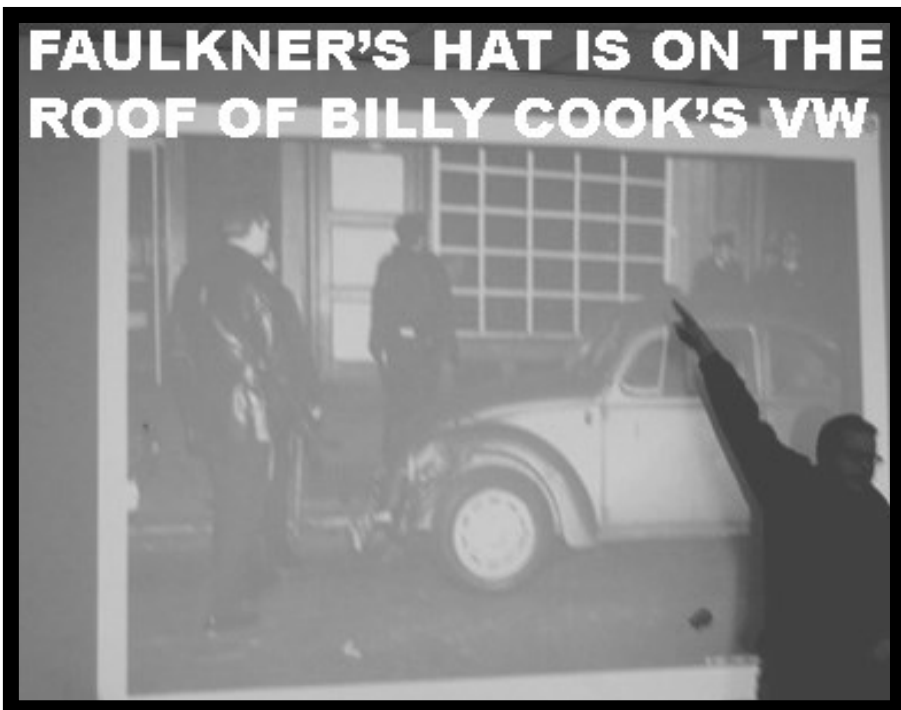
paign was started by Journalists for Mumia, International Concerned Family & Friends of Mumia, and the NY Free Mumia Coalition. Folks from around the world wrote NBC asking for the evidence of innocence and unfair trial to be fairly presented alongside Faulkner and Smerconish's arguments for execution. The campaign was victorious when the Today Show broadcast Polakoff's photos, marking the first time that the mainstream media had shown them on TV.

Days earlier, Reuters published an article about the Journalists for Mumia press conference held in advance of Smerconish and Faulkner's appearance on the Today Show. While no photos were printed with the article, it was the first time that a mainstream media outlet had even acknowledged their existence.

**Pedro Polakoff's Photos Presented by Journalists for Mumia, Dec. 8, 2007**



PHOTO: The parking spot immediately behind Officer Faulkner's car is empty, to the end of the curb. This empty space is exactly where prosecution witness Robert Chobert testified he was parked.



(PHOTO: Officer Faulkner's hat is on the roof of Billy Cook's car, and not on the sidewalk, where the police hat would later appear for the official police photo, as shown on page 29.)

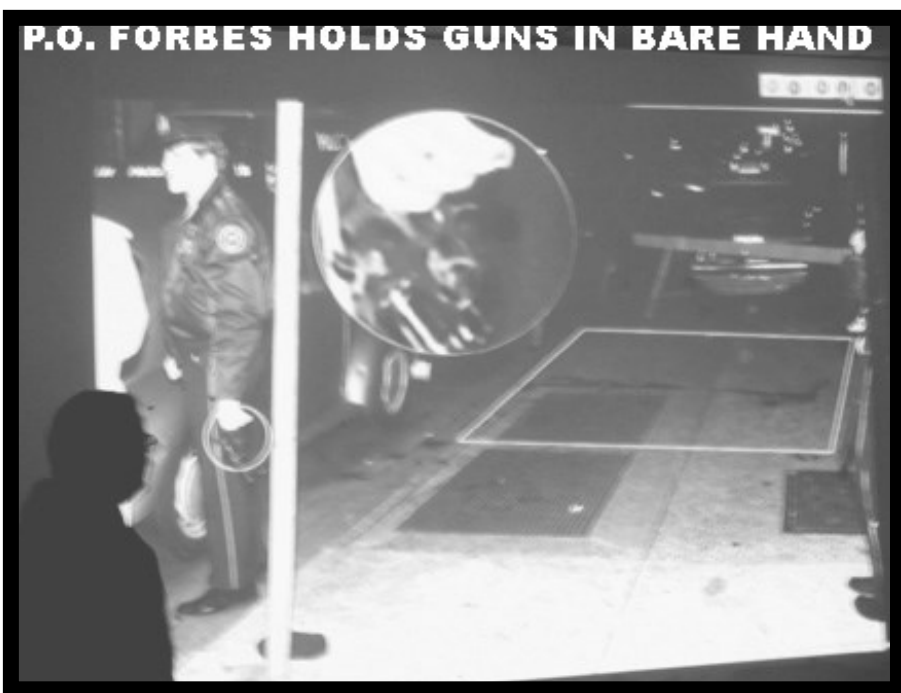
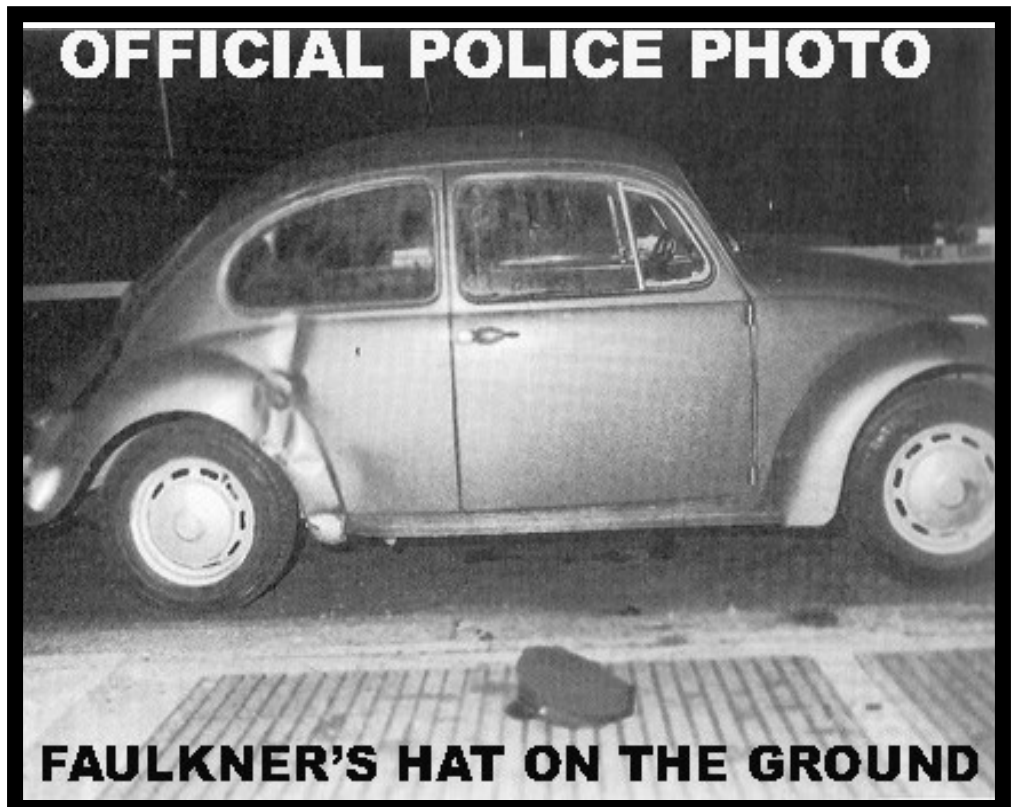


PHOTO: Philadelphia Police Officer James Forbes holds both Mumia's and Police Officer Daniel Faulkner's guns in his bare hand and touches the metal parts. The two trigger are shown magnified in the white circle. This contradicts Forbes' trial testimony that he had properly preserved the ballistics evidence.





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### The Polakoff Photos: 20 FAQs

shown was suspiciously absent.

#### 10. In spite of their failure to respond to Polakoff, is there any evidence that the police and prosecutors did know about his photos?

As noted above, the police were very much aware that he was shooting these photos during the early moments at the crime scene in 1981. There is no way they would not be aware of that basic fact. Moreover, according to Schiffmann, three of Polakoff's photos did appear in different Philadelphia newspapers during the days just after the shooting. Schiffmann summarizes: "It is a breathtaking lack of investigative zeal that they didn't get back to him all by themselves despite the fact that the cops knew him well and his name was clearly visible on the photos, at least in the editions of them I came across on the internet in May 2006." [6]

#### 11. Were any of the photos used in the trial of 1982?

No, they were not used at the 1982 trial where Abu-Jamal was convicted, nor at any of his later appellate hearings, nor at the PCRA Hearings of the 1990s.

#### 12. If these photos are potentially helpful to Abu-Jamal's case, why didn't Abu-Jamal's several teams of attorneys make use of them?

The answer to this query is simple: the Abu-Jamal attorneys did not know then that the Polakoff photos existed. Now that they do know, it's a different story, provided, of course, that Abu-Jamal gets a new trial.

#### 13. Why didn't Polakoff contact Abu-Jamal's defense team about his photos, after he had not received any responses from the police or prosecutors?

In the period of the shooting, and right up to the



PHOTO: On May, 11, 2010 Michael Coard, an attorney and respected community activist explained why he believes Mumia is factually innocent. Photo by Jamal Journal's Joe Piette.

recent present, Polakoff was very supportive of the police view of the case, having, according to Schiffmann, "not the slightest doubt that Mumia was the murderer." [7] Polakoff wanted to help the prosecution and was surprised when they were totally uninterested in his photos. He had no motivation to contact the defense team.

## II. IMPLICATIONS

#### 14. Why was Polakoff so sure Mumia was the shooter? After all, even though he was an early arrival to the crime scene, he wasn't early enough to see the shooting.

Polakoff simply believed the police who told him that a fellow cop had been shot and that they "had the motherfucker who did it." [8] When he offered the photos to them he just wanted to try to help them confirm that argument with the material available to him.

#### 15. Was Polakoff told anything else by the police about the killing of Daniel Faulkner?

Yes. In fact, Polakoff says, "all the officers present expressed the firm conviction that Abu-Jamal had been the passenger in Billy Cook's VW and had fired and killed Faulkner by a single shot fired from the passenger seat of the car." [9] For all the years after the case,

since Polakoff had read almost nothing else about the details and debates about what happened, he "held the firm opinion that this was indeed what had taken place," i.e. that Mumia – contrary to actual fact - had been riding in his brother's VW and emerged from there to shoot Faulkner. [10]

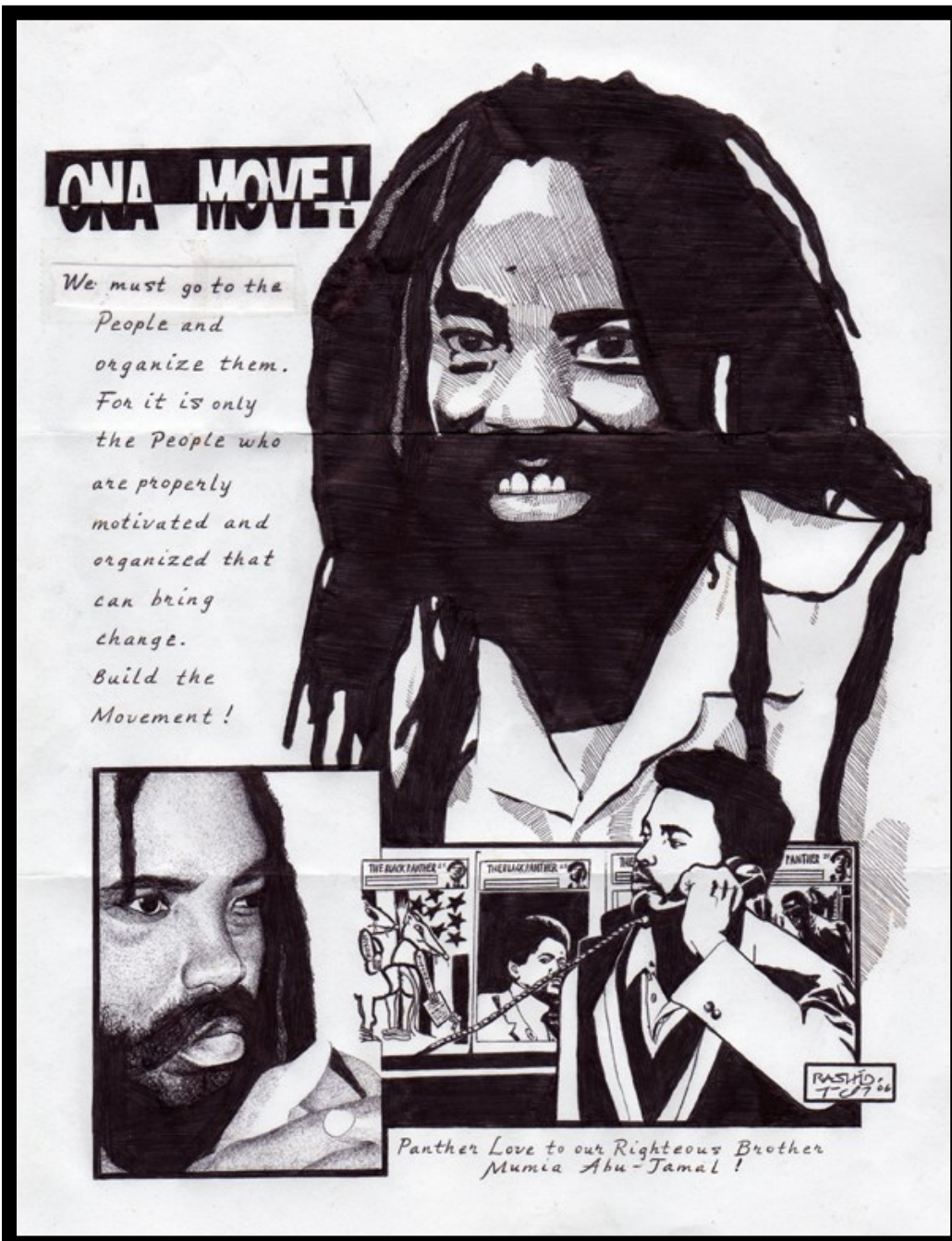
#### 16. At Abu-Jamal's trial, police, prosecutors, and defense all agreed that Mumia approached the scene from his own cab through a parking lot across the street. So, where did the police get this early version of the crime that the shooter emerged from the passenger seat of Billy Cook's VW?

Polakoff told Schiffmann that the early police opinion was the result of interviewing three other witnesses who were still present at the crime scene (a parking lot attendant, a drug addicted woman, and another woman) – none of whom, however, seem to have "appeared in any report presented by the police or the prosecution." [11] Polakoff concluded this from statements made by the police to him directly, and from his overhearing of their conversations.

#### 17. Why would Abu-Jamal and his brother, Billy Cook, not themselves emphasize the presence of the third man, Kenneth Freeman, at the crime scene and thus a potential suspect?

Schiffmann argues that the identity of the third man, Kenneth Freeman, means that if Abu-Jamal and his brother fingered him as the killer they would have been pinning blame not only on a friend of theirs, but on a friend of their family. Freeman would then have had to face the same fate that Abu-Jamal did – for an action that might have been considered as legitimate self-defense and the defense of others on the part of Abu-Jamal and Billy Cook. [14]

The background to this is that according to Schiffmann, all the available evidence points to the conclusion that the December 9, 1981 shootout was triggered by the life-threatening shot that Officer Faulkner fired into Abu-Jamal's chest. With Mumia Abu-Jamal already incapacitated, most likely the third man on the scene, Kenneth Freeman then sprang into action and began firing at the officer, in what he probably conceived as defense of Abu-Jamal, his brother, and not least himself. But of course there was no guarantee, to put it mildly, that the Philadelphia courts would interpret this as self-defense. So Freeman ended up being left out of the



"Ona Move," drawn in 2006 by Kevin "Rashid" Johnson. (www.rashidmod.com)

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### The Polakoff Photos: 20 FAQs

picture by the two other men involved, Mumia Abu-Jamal and Billy Cook.

#### 18. Is there any evidence that Kenneth Freeman was the kind of person who could be considered a threat to a police officer?

In a deposition by Philadelphia journalist Linn Washington, Jr., he stated that Kenneth Freeman frequently reported his experiences of police brutality to the Philadelphia Tribune where Washington worked. Washington knew Freeman as a frequent victim of police abuse.[15] Washington has also stated repeatedly that, on account of this background, Freeman harbored "an enormous anger at the police." [16]

#### 19. Is there any evidence that Officer Faulkner that night had any interchange with a third person such as Kenneth Freeman?

Yes, in the shirt pocket of Officer Faulkner was a driver's license application in the name of Arnold Howard, which Howard later testified was paperwork he had given to Kenneth Freeman. We don't know quite why Freeman was given the paperwork or what Freeman would do with it, but the fact that he was known to have it, and that it ended up in Officer Faulkner's shirt pocket, suggests that Faulkner and Freeman had some interchange on the night of the shooting.

Six people, Robert Chobert, Dessie Hightower, Veronica Jones, Deborah Kordansky, William Singletary, and Marcus Cannon, reported at various times that they saw one or more men run away from the scene, in the direction of a nearby alleyway which would have been a very suggestive escape route for anyone who would want to avoid being caught by the police.

One of these people was prosecution witness Robert Chobert. There is every indication – see for this, *inter alia*, question 8 – that Chobert did not observe the shooting itself and was not where he claimed to have been, behind Police Officer Faulkner's car, but he may very well have observed the person that fled the scene after the shooting. Chobert first simply said that the shooter had run away. Shortly after this, after he had identified Abu-Jamal, he said the shooter had "ran away" but did not get very far – 30 to 35 "steps" and was then caught. At the trial, Chobert said the shooter made it no further than ten "feet." Actually, Abu-Jamal was right next to the dead officer and thus fit neither of the accounts given by Chobert. Interestingly, in his first descriptions after the shooting, Chobert described the shooter as large,



PHOTO: Mike Africa Jr. speaks in support of Mumia on April 30, 2018. Photo by Joe Piette.

stocky, weighing 220 to 225 pounds and wearing dreadlocks – a description that fits Kenneth Freeman as he is remembered by acquaintances almost perfectly.

#### 20. Where is Kenneth Freeman now?

He was found dead on the night of May 13/14, 1985, the night of the firebombing of the MOVE house. Freeman was found "handcuffed and shot up with drugs and dumped on a Grink's lot on Roosevelt Boulevard, buck naked." [17] Again, no jury ever heard or deliberated on Kenneth Freeman's fate, or on his possible connections to the crime for which Mumia Abu-Jamal was convicted and sentenced to death.

Given the actual flimsiness of the case against Abu-Jamal – lying eyewitnesses, a phony confession, distorted or non-existent ballistic evidence – the police at the scene had to suspect that someone else was involved and probably the actual shooter. Since they were aware of the Howard license in Faulkner's shirt, an immediate trail led to none other than Kenneth Freeman. Given the reventfulness and propensity of the Philadelphia police for deadly violence, as well as the date and extremely suspicious circumstances under which the dead Freeman was found, the conclusion that he was killed by the police as part of a general vendetta against its perceived "enemies" (remember that 11 MOVE members were killed the same night) doesn't seem far-fetched.

#### ENDNOTES

[1] J4M communiqué, December 12, 2007.

[2] Linn Washington, Jr., in sworn declaration, May 14, 2001, sections 18 and 19.

[3] Michael Schiffmann, personal communication to Mark Taylor, October 9, 2007.

[4] Schiffmann, personal communication to Taylor, October 9, 2007.

[5] Personal communication to Schiffmann, June 19, 2006.

[6] Personal communication to Mark Taylor, EMAJ, October 9, 2007.

[7] Schiffmann, personal communication to EMAJ, October 9, 2007.

[8] Michael Schiffmann, *Race Against Death*, 234.

[9] *Ibid.*

[10] *Ibid.* 235.

[11] *Ibid.*

[12] E.g., in his guilt phase summation at the Abu-Jamal trial, prosecutor McGill attacked defense witness Dessie Hightower, the only witness at the Abu-Jamal trial who testified to a person running away from the scene, primarily from angles that had nothing to do with that particular point, but these attacks were clearly meant to demonstrate that no other person had been at the crime scene apart from Cook, Abu-Jamal, and Faulkner. See TP, July 1, 1982, p. 165-168.

[13] William Cook Trial Transcript, p. 33.

[14] Schiffmann, *Race Against Death*, 220.

[15] Linn Washington, Jr., sworn declaration, May 14, 2001, sects. 13, 14, 15.

[16] Conversations with Schiffmann, February 2006, May 2006, August 2006, May 2007.

[17] Testimony by Arnold Howard at the PCRA Hearing, August 9, 1995, p. 21.



PHOTO: On April 26, 2010, Mumia supporters marched to the US Department of Justice in Washington DC. Upon arrival, Dr. Suzanne Ross from the NY Free Mumia Coalition and other supporters hand delivered petitions calling for a federal civil rights investigation into Mumia's case, citing the DA's suppression of the Polakoff photos and other evidence of DA misconduct. Photos by Jamal Journal staff photographer Joe Piette.

# From The Archives: Test Shows Robert Chobert and Cynthia White Lied at Mumia's Trial; Sidewalk Murder Scene Should Have Displayed Bullet Impacts

Written by Dave Lindorff and Linn Washington Jr.  
www.thiscantbehappening.net

First published on September 20, 2010

(A professional-quality video of this test can be viewed at [www.JamalJournal.com](http://www.JamalJournal.com))

During the contentious 1982 murder trial of Philadelphia radio-journalist Mumia Abu-Jamal, a central argument of the prosecution in making its case for the conviction and for imposition of a death penalty was the trial testimony of two key eyewitnesses who claimed to have actually seen Abu-Jamal fire his pistol repeatedly, at virtually point-blank range, into the prone Officer Daniel Faulkner.

This testimony about Abu-Jamal's shooting at the defenseless policeman execution-style solidified the prosecution's portrayal of Abu-Jamal as a cold-blooded assassin.

There was however, always the lingering question, never raised at trial, or even during the subsequent nearly three-decades-long appeals process, of why, if Abu-Jamal had fired four bullets downward at Faulkner, only hitting him once with a bullet between the eyes on the morning of December 9, 1981, there was no evidence in the surface of the sidewalk around the officer's body of the bullets that missed.

Now ThisCantBeHappening! has raised further questions about that troubling lack of any evidence of missed shots by doing something that neither defense nor prosecution ever bothered to do, namely conducting a gun test using a similar gun and similar bullets fired from a similar distance into a slab of old concrete sidewalk similar to the sidewalk at the scene of the original shooting on the south side of Locust Street just east of 13th Street in Center City, Philadelphia.

Our test conclusively demonstrated it is impossible to fire such a gun from a standing position into a sidewalk without the bullets leaving prominent, unambiguous and clearly visible marks. Yet, the prosecution's case has Abu-Jamal performing that exact miracle, missing the officer three times without leaving a trace of his bad marksmanship. So where are the missing bullet marks? The police crime-scene photos presented by the prosecution don't show any,

and police investigators in their reports don't mention any bullet marks on the sidewalk around the slain officer's body.

The results of this test fundamentally challenge the prosecution's entire case against Abu-Jamal since they contradict both eyewitness testimony and physical evidence presented by the prosecution about the 1981 murder of Officer Faulkner in a seedy section of downtown Philadelphia.

Further, this test reignites questions about how police handled and/or mishandled their investigation into the murder of Officer Faulkner, quickly targeting Abu-Jamal as the killer.

For example, police failed to administer the routine gunpowder residue test on Abu-Jamal's hands to determine if he had recently fired a gun. Such a test has long been standard procedure for crimes involving gun shots. Oddly, police did perform this routine residue test on at least two persons initially suspected of being at the crime scene, including one man who fit the description of a man numerous eyewitnesses told police had shot Faulkner and then fled the scene. Police, finding a critically-wounded Abu-Jamal at the crime scene, arrested him immediately, but never bothered to do a test of his hands—or if they did, never reported the results.

While appellate courts – federal and state – have consistently upheld Abu-Jamal's conviction, no court has considered the contradiction between prosecution claims of Abu-Jamal having fired into the sidewalk and the complete lack of any evidence of bullet impacts, or even of an explanation for the missing marks. Last week, the Philadelphia District Attorney's Office curtly dismissed results of this test, which shows such marks would have been impossible to miss, as yet another instance of the "biases and misconceptions" regularly presented by persons who have not "taken the time to review the entirety of the record..."

For this experiment, veteran Philadelphia journalist Linn Washington, who has investigated the Abu-Jamal case since December 1981, obtained a Smith & Wesson revolver with a 2-inch barrel, similar to the 2-inch-barrel, .38-caliber Charter Arms revolver licensed to Abu-Jamal which was marked as evi-



PHOTO: The test was conducted to replicate conditions at the crime scene.

dence at the trial as being the weapon which was used to shoot and kill Officer Faulkner.

Meanwhile, journalist Dave Lindorff, who spent two years researching and writing *Killing Time* (Common Courage Press, 2003), the definitive independent book about this case, procured the concrete test slab, a 200-lb section of old sidewalk, about two feet square, five inches thick and containing a mix of gravel and a steel-reinforcing screen, that had recently been ripped up during construction of a new high school in Upper Dublin, PA. He then constructed a protective shield using a wooden frame and a section of galvanized, corrugated-steel roofing material purchased from Home Depot.

A small one-inch-diameter hole was drilled through the steel sheet about 18 inches from ground level, to enable Washington to point the pistol barrel through and fire at the concrete without risk of being injured by flying shrapnel or concrete fragments. Washington also wore shatter-proof military-surplus goggles for the experiment, so he could safely aim through the hole. During the test a total of seven bullets, including Plus-P high-velocity projectiles similar to the spent cartridges police reported finding in Abu-Jamal's gun, were fired downward at the sidewalk slab from a standing position, replicating the prosecution's version of the murder. (A Penn State history professor knowledgeable about firearms and ballistics including the construction of bullets, observed the experiment from start to finish.)

After each shot was fired into the concrete, the resulting impact point was labeled with a felt-tipped pen. Still photographs were taken showing all seven bullet impacts.

The entire experiment was also filmed using a broadcast-quality video camera.

What is clear from this experiment is that the bullets fired at close range into the sidewalk sample all left clearly visible marks. The three bullets that had metal jackets produced significant divots in the concrete, one of these about 1/8 of an inch deep, and two shallower, but easily observed visually and easily felt with the fingertip. The other four bullets, lead projectiles only, left smaller indentations, as well as clearly visible gray circular imprints, each over a half inch in diameter, where the lead from the bullets appears to have melted on impact and then solidified on the concrete. Police crime scene reports list investigators recovering fragments of at least two

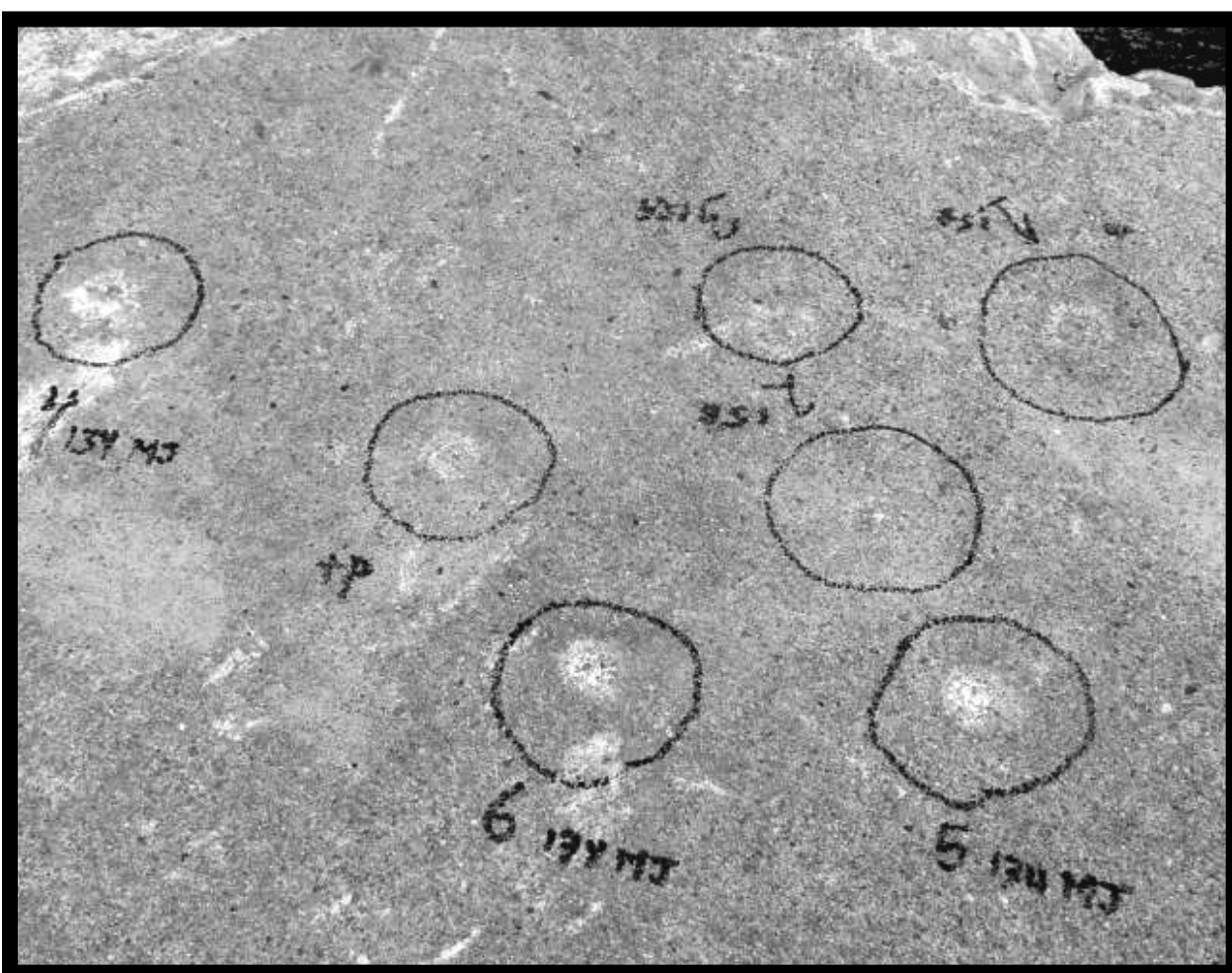


PHOTO: The results of the test are shown here, Lindorff and Washington conclude that the "impact marks in the test are clearly visible, especially for the Plus-P metal-jacketed bullets."

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