

IN THE COURT OF COMMON PLAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
(CRIMINAL TRIAL DIVISION)

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COMMONWEALTH : JANUARY SESSIONS 1982
:
vs. : 1357-Poss. Instru. Crime Genly
: 1358-Murder
MUMIA ABU-JAMAL : Voluntary Manslaughter
a/k/a WESLEY COOK : 1359-Involuntary Manslaughter

- - -

Philadelphia Pennsylvania, 7 June 1982
Room 253 City Hall

- - -

Before: HONORABLE ALBERT F. SABO

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APPEARANCES:

JOSEPH MCGILL, Esquire
Assistant District Attorney

ANTHONY JACKSON, Esquire
For the Defendant

MUMIA ABU-JAMAL
In Person

- - -

VOIR DIRE

VOLUME I

(In-chambers conference in the presence of The Court, Mr. McGill, Mr. Jackson, and the Defendant reported as follows:

MR. MCGILL: While we are waiting for the questionnaires to be duplicated so we can discuss them, I will note for the record that I was concerned perhaps another colloquy should be conducted in reference to clothing for Mr. Jamal, who I see, and I think Mr. Jackson will agree, he does not have prison clothing on. This is informal clothing which is appropriate, and that there is no way that I can see that that clothing would necessarily represent clothing from a man who was incarcerated.

Do you agree with me, Mr. Jackson?

MR. JACKSON: That's a question for Mr. Jamal.

THE COURT: I think the record will indicate that he has a tan shirt, tan pants. I'm not that familiar with the colors. Is that a tan?

THE DEFENDANT: Green, Judge.

THE COURT: Green pants and a tan

shirt.

-THE DEFENDANT: Green shirt.

THE COURT: Is that what you want to wear? Do you have any other clothing that you want to wear?

THE DEFENDANT: My clothing will change from time to time.

THE COURT: If your family has any clothing that you want brought in, you just let me know and I will issue the proper orders so that the sheriff will allow you to change into whatever clothing you want to change to.

MR. MCGILL: I do notice though, Your Honor, that he does have a band on his right wrist area which in fact is identifiable as that which would be part of prison garb.

If he wishes to wear that, that will be fine. But I think he should be advised that it might be in front of a jury better for him to take that off if he wants to.

THE COURT: Let's be practical. Do you think for one minute that this jury doesn't think he's incarcerated?

MR. MCGILL: I really have no idea, Judge, and I just want to protect the record.

THE COURT: Jurors realize that when you are charged with murder sometimes you are held without bail. And even if there is bail, bail is sometimes very high that the individual can't make it. So I don't know that that's prejudicial to him.

You can't underestimate the intelligence of a jury. I'm sure they understand that, but that's up to Mr. Jamal.

MR. MCGILL: Could he be asked?

THE COURT: That's up to him. He has been alerted to the factual situation. It's up to him which way he wants to handle the matter.

It's up to you, Mr. Jamal.

THE DEFENDANT: Obviously I think this band should be removed, because it is easily identifiable.

MR. MCGILL: Fine. Let's have it removed before the jury is even brought in.

THE SHERIFF: I think it will be appropriate if an order was issued to the prison,

because he goes back without a ban
will give him another. It might be
problems.

MR. MCGILL: Isn't there
it can be taken off and then put on upstairs?

THE COURT: Once it's removed, it's
removed. The only way is if it's covered up
with the shirt sleeve.

MR. MCGILL: I think that's still too
dangerous, Your Honor. I would prefer that an
order be issued for that purpose if he wishes
that to be removed, that that be removed in
front of the jury. Whatever they want to do,
they want to put another one on overnight, fine;
it's going to be removed the following day.

THE COURT: Okay.

MR. MCGILL: Also, Your Honor, as long
as we are waiting, although it is repetitious,
since we now have passed the motion stage and
Mr. Jamal has had an opportunity to be counsel
and to represent himself, I would ask the Court
that perhaps a brief colloquy again on this
point asking Mr. Jamal again if he wishes to

continue to represent himself and indicating those advantages of counsel over self-representation before the jury is started, Your Honor. If Your Honor has certain questions, fine. I have other questions that I might ask Your Honor to ask Mr. Jamal.

THE COURT: I will ask Mr. Jamal.

Mr. Jamal, you have had an opportunity to think about this over the weekend. Do you still wish to represent yourself in this proceeding?

THE DEFENDANT: I do.

THE COURT: Do you understand that we are now in the process of selecting a jury? And I suppose then we will go into the actual trial itself once a jury panel is selected.

There are certain things that you have to do: Give an opening statement, if you wish, to the jury. Then go through the regular trial proceedings, as I have warned you once before, knowing when to make objections or whatever other legal challenges that you wish to make at the appropriate time. Your failure to do those

matters would act as a waiver and would not be considered at this level or at the appellate level.

Knowing all of that, do you still wish to represent yourself knowing that you run into a great deal of risk by representing yourself?

THE DEFENDANT: I do, Judge.

MR. MCGILL: Your Honor, as far as summing up to a jury.

THE COURT: I was going to ask him. Well, he knows that you sum up to the jury. He knows all of those factors.

MR. MCGILL: Judge, it might be a little bit repetitious, but may I generally say something and then see if Your Honor would agree that it would be a question?

THE COURT: If you feel that you want to ask a question, go ahead and ask Mr. Jamal so that he understands, rather than give it to me and me give it to him.

MR. MCGILL: Fine, whatever Your Honor wishes.

Mr. Jamal, the Judge has already said

about the opening statements and making objections during the course of my direct examination or my cross-examination and an attorney, of course, with experience is skillful and trained to do that. This would not be able to be done by an attorney, but by you, and it may be failed to be done by you during the course of the testimony of direct or cross-examination.

It may also be possible that you may object or not want to object because you have your own reasons.

Also, anything at all in reference to claiming on appeal that you yourself have been ineffective as your own counsel because of a lack of training or for any reason essentially would be waived, which means for the record would be given up, would not be a valid claim once you decide to represent yourself.

The value of an attorney, not only the continuing value which Mr. Jackson will provide by giving you advice, but when an attorney is representing a client and asking

questions it is his job and his role to advance theories during the process of questions. He may come up with another idea and ask another question. His whole approach may be such a way with his personality that he may believe it to be best to represent the interests of his client. And, of course, his knowledge in terms of theories of defense or other matters, legal matters, would be particularly unique to an attorney's education, and particularly one who has had the experience that Mr. Jackson has had.

Do you understand, sir, everything that I have just said to you? What you essentially are giving up when you make a decision to represent yourself, do you understand that?

THE DEFENDANT: Yes, I do.

MR. MCGILL: Do you still want to represent yourself even though all the things that we have again attempted to say to you in reference to the value of having an attorney?

THE DEFENDANT: Yes, I do.

MR. MCGILL: Your Honor, if at any time it may become a possibility ⁱⁿ the trial where again I would suggest to the Court that it may be advantageous for another colloquy, I would with the Court's permission mention it to Your Honor on the record.

THE COURT: Mr. Jamal realizes that any time during the proceedings, if he feels that he doesn't feel competent enough to proceed in this matter all he has to do is to let me know and Mr. Jackson will, of course, take over. But I will leave that to his discretion, and he knows better than anyone if and when he may feel inadequate to that extent.

We will now go over the questions.

MR. JACKSON: Judge, there were additional questions that were contained in the American Journal of Trial Advocacy. I have given it to the crier to also copy. Previously I have submitted copies to Mr. McGill when the matter was before Judge Ribner. Mr. Jamal has one copy here. Hopefully the crier will bring additional copies in. They would be additional

questions that Mr. Jamal would have Your Honor consider.

THE COURT: I guess while we are still waiting I might just as well let you know what the procedure will be.

I will first address the entire panel as a whole, giving them some basic principles of law that they must follow. Then I will introduce the Assistant District Attorney and all possible witnesses that he may have, and even though they may not be witnesses their names may come up, and to give them a brief statement as to where and when the incident occurred to see whether or not anyone knows the individuals involved.

I will then introduce the defendant and his counsel and see if anybody knows either of them.

Do you have any names that you think may come up during the course of the trial that we ought to present to the jury to see whether or not they know them?

(Mr. Jackson and the defendant confer.)

THE COURT: Not necessarily that you are going to call them, but which names that you think may come up.

MR. JACKSON: At this point we know of the possibility of George Fassnacht. He is a ballistician.

THE COURT: Anybody else that you think whose name would come up?

MR. MCGILL: This would include civilians.

MR. JACKSON: Robert Greer has been used as an investigator and photographs have been taken by Bill Peraneau, William Peraneau. I believe his last name is spelled P-E-R-A-N-E-A-U.

Other than those individuals, Your Honor, I don't believe that we have any names at this point.

MR. MCGILL: How about civilian witnesses, maybe fact witnesses? You have two fact witnesses.

MR. JACKSON: Desi Hightower and Robert Pigford are possibilities.

(Mr. Jackson and the defendant confer.

THE COURT: This Robert Greer, the investigator, do you want me to say investigator or do you want me to just say his name?

MR. MCGILL: I think the name will be sufficient.

THE COURT: It's just a name that may come up.

MR. JACKSON: Fine, sure.

THE COURT: Anything else?

MR. JACKSON: At this point, Your Honor, that's all.

MR. MCGILL: You might want to put Dr. Regina Cudemo.

MR. JACKSON: Fine. I guess those witnesses who were called at the motion are certainly another possibility.

MR. MCGILL: The police officers I have put down.

THE COURT: Who was the doctor?

MR. MCGILL: Cudemo, C-U-D-E-M-O, Regina.

I think you can also put Dr. Anthony Coletta, C-O-L-E-T-T-A. You can put him on my

list. I think maybe you can group it all on the list. Dr. Jarrell, that you might want to put on my list, J-A-R-R-E-L-L.

THE COURT: Do you know Dr. Jarrell's first name?

MR. JACKSON: Bruce.

MR. MCGILL: You can put that on my list, too.

THE COURT: If you want me to, I can throw them all on one list. It doesn't make any difference.

MR. MCGILL: It makes people wonder who is calling who.

THE COURT: I will let them know that they are not necessarily going to be called, but their names may come up.

MR. MCGILL: I would like to put on the record that it may well be that during the course of trial Mr. Jamal may well think of someone else, and I will certainly not hold him to the fact of not having mentioned it at this point. I just want to be sure.

THE COURT: We just want to know if

any of the jurors know them, so that they would let us know so that we can properly question them.

Which is easier, should we see which ones are applicable or which ones are not applicable at this time?

MR. MCGILL: I would say the ones that are applicable.

Looking over the 115, Your Honor, I have come up with approximately I would say 25 that I felt were applicable.

THE COURT: Which are they, so we can mark them right off?

MR. MCGILL: That does not mean that I think they should be stated in the way or as often. For example, one area might be covered by one question instead of four.

THE COURT: Which ones do you think?

MR. MCGILL: Name, Your Honor.

Address I would be against.

You want just what's applicable?

THE COURT: The name, we already have that.

MR. MCGILL: No. 3.

THE COURT: That's out, because there's one county. This questionnaire was designed for some other locality, not here.

MR. JACKSON: I understand 2, 3, and 4 are not applicable here.

MR. MCGILL: Judge, I would ask this and I have no objection if --

THE COURT: What area of the City. I think that's in here somewhere, I don't know. But if it's not, okay.

MR. MCGILL: Either what area of the City or I would also prefer to say zip code, that might be an easier one. One or the other.

THE DEFENDANT: Do you have any objection to neighborhood?

THE COURT: That's the area. In other words, the guy says I live in Germantown or I live in the Northeast or Southwest Philadelphia or South Philadelphia. The area is okay.

MR. MCGILL: Which number is that, Judge?

THE COURT: That's just taken care of

for 2, 3, and 4.

MR. MCGILL: So I will cross out 2, 3, and 4.

I have no objection as to No. 5.

No. 6 I have an objection to, because I think it would be obvious. I definitely have no objection to questions in relation to race, but "What is your race," I think that is unnecessary.

I have no problem with questions as to race such as were mentioned the other day, such question which Your Honor has often heard and approved: Would the fact that this defendant is of the black race in any way prevent you from being fair and impartial or giving him a fair trial or is there anything about this defendant's race that would prevent you from giving him a fair trial?

I have no problem with that kind of question.

THE COURT: Then what you are saying is rephrase 6 to say --

MR. JACKSON: Your Honor, if I could

at this point with regard to "What is your race," I agree that it may be obvious, but the record, of course, cannot reflect what is obvious to the eye. That is the reason for asking the question.

THE COURT: Well, you could in your question say that.

MR. JACKSON: We can say "You are of the white race and the defendant is of the black race," for instance, but then again when you get to black jurors you are going to have to say the same thing.

Your Honor, the problem is that you take the chance of offending someone by assuming they are only going to be two races and someone considers themselves something else. So then we run the risk rather than asking them what your race is, we are going to accuse someone. To ask someone, "Are you white or are you black," and they are going to say, "No, I'm Mongoloid. I'm something else," we would prefer not to run that risk simply by asking, "For the record could you tell us what your race is?" I don't think

that that's offensive.

MR. MCGILL: Judge, I had this done in one other trial where the venirepersons have been asked that. Really they believe that's kind of ridiculous. They even begin to chuckle.

Even if they say what their point is, so what? That's what their point is and that's exactly what it could be. But rather than have them emote this way or immediately have some kind of a feeling, it possibly might be wise to say it's not necessary for it to be on the record that they are black or white, simply not necessary.

If at the end of the jury selection process and the jurors are selected counsel wishes to enumerate for the record the racial composition of the jury, well, that's fine, that can be done easily enough. But I see no reason, it makes no sense. The man knows what he is. The witness knows what he is. The fact of his having to state it on the record is irrelevant in my opinion and embarrassing maybe.

MR. JACKSON: Your Honor, the reason

it is relevant -- we don't wish to embarrass anyone obviously. In the event Mr. Jamal was convicted and there was a challenge to the jury -- and I have read numerous cases and I can bring up what is the race of the jurors -- it's not stated on the record.

So what if counsel goes back and says how does counsel know. The only way we can find out, Judge, is to ask.

I appreciate the sensitivity, the emotion that it evokes.

THE COURT: In other words, are you going to be the one that asks the question?

MR. JACKSON: Mr. Jamal is going to ask that.

THE COURT: If you want to ask it, go ahead. I'm not going to worry about that.

What else?

THE DEFENDANT: Just a question. These questions that are circled, did you circle these? Are these the ones that you have objections to?

MR. MCGILL: They were the ones that I

immediately had objections to, the circles.

The other ones I either felt that they could be covered in another way or perhaps grouped into one question.

I have no problem with No. 7, just "How long have you lived at your present address? Where was your last address? What section of the City was your last address?" I don't have any problem with that.

"Where you have lived for the past 15 years or did you grow up in," you can basically find that out by those two questions I think.

"How long have you lived at your present address?"

"I lived there 2 years."

"Where did you live before there?"

"Well, I lived in North Philadelphia."

"Well, how long?"

"Approximately eight years or so."

I think that's sufficient, rather than going into listing, particularly someone who has been very transient, and just going on and on.

THE COURT: Yes, because you may ask them one question, "How long have you lived in this area," and the person says 30 years. Well, there's no sense going back to the 15-year bit or asking them anything else.

MR. MCGILL: You are saying what I am doing, Judge?

THE COURT: What you are saying is the right way. It covers the same thing.

8 is out, I assume.

MR. JACKSON: Yes.

MR. MCGILL: 7, 8, and 9, I felt could be handled by that same type of question, "How long have you lived there? Where did you live before there?"

I jumped down to No. 17, Your Honor, as being I think appropriate.

MR. JACKSON: Wait a minute. You are jumping from 9 to 17 and saying all in between are inappropriate?

MR. MCGILL: Yes.

MR. JACKSON: Can we go down each number rather than jump back and forth?

MR. MCGILL: Whatever Your Honor wants.

THE COURT: I don't care.

MR. JACKSON: With regard to No. 10, Your Honor, why would that be objectionable, if you own a home or live in an apartment?

THE COURT: I don't particularly care.

MR. MCGILL: No, I don't see anything wrong. I'm just thinking of the number of questions that we are talking about.

THE COURT: He may not ask that question of every juror. He may decide he just wants to ask that question of a particular juror. I don't particularly care.

MR. JACKSON: 11, we agree that once they tell us the neighborhood that's enough, unless it is peculiar neighborhood we should know that.

Judge, with respect to No. 12, "Is there a crime prevention group in your neighborhood and do you participate in it," it's really the participation that we are concerned about, because that would obviously reflect or demonstrate a bias the prospective juror might

have with respect to crime and crime prevention. If they are made a member of a neighborhood watch group, then I think that that begins to tell us at least that there is some preconceived notion of what police ought to be doing and I think we should have an opportunity to develop that.

MR. MCGILL: Judge, I think 12, 13, 14, 15, and 16, are basically social questions which I don't think are appropriate for the purposes of voir dire.

MR. JACKSON: Judge, the cases have held that if in fact the questions are propounded to detect a possible bias or prejudice of the jury then it should be admissible, and we are saying particularly in Question No. 12 with regard to their participation in a crime prevention program. That's almost like asking an individual if they are police. We can go down the list and find out if they are in law enforcement.

Crime prevention in my view is the same thing. The only difference is that you are

a civilian. That's the only difference. And just like you are able to ask someone if they are police, you ought to be able to ask them if they are in crime prevention.

MR. MCGILL: Whatever Your Honor thinks.

THE COURT: That doesn't bother me. If you want to ask it, go ahead.

MR. MCGILL: 13, 14, 15, and 16, I would object to those.

THE COURT: They are out.

MR. MCGILL: 17 I have no problem with that being asked.

MR. JACKSON: Your Honor, if I might, in No. 13, "What do you think about the crime situation in general in Philadelphia," I think again we have an opportunity that we should be able to explore what the prospective juror's opinion is. I appreciate that normally and the courts have said normally you are not able to get into the opinion and attitudes of the juror unless it is posed to determine --

THE COURT: You see, you are covering

that in 12. I'm allowing you to cover that in 12. If he said, "No, I don't belong to any crime prevention group," that's the end of it.

MR. JACKSON: But that doesn't tell us what their attitude towards crime is, what their opinion is.

THE COURT: What difference does it make?

MR. JACKSON: Because the Court says we have a right to find out if they are biased or prejudiced with regard to those situations.

THE COURT: You are allowed to ask them that whatever your opinions may be as to crime can you give this defendant a fair and impartial trial, fine.

MR. JACKSON: What I am saying is, what is that opinion.

THE COURT: That doesn't make any difference what that opinion is. If he can give him a fair and impartial trial, that's all that counts.

MR. JACKSON: But Your Honor, this is the point: If you ask a juror, whatever their

opinion is, "Can you give this defendant a fair trial," and they say, "Yes, I can," we need to know what that opinion is and make an independent determination as to whether or not that witness would be able to give him a fair trial. Without that opinion, how could we do that?

MR. MCGILL: I strongly oppose that. It is too open a question.

THE COURT: I don't think that's an appropriate question.

MR. JACKSON: Your Honor, I think we do have some questions that would be allowed, not specifically this question, and I would be willing to submit cases to Your Honor to review.

THE COURT: Go ahead, but at the present time it's out.

MR. MCGILL: Your Honor, No. 17 I think is appropriate.

Nos. 18, 19, and 20, I think are appropriate, but I just think they might be able to be answered in one or two real fast questions.

THE COURT: What was the last school

that you attended, that will tell you right off the bat.

MR. MCGILL: If they want to ask what was your major, that is fine. I have no objection to those two.

THE COURT: 21 is: "What kind of work do you do?"

MR. MCGILL: No problem.

MR. JACKSON: No. 22, "What do you mainly do on your job," it may be the same question.

MR. MCGILL: I circled that only because I thought it was repetitious.

The same thing with job title. It's all one.

THE COURT: It's the same thing on the next page, the job title and if you are retired what was your last type of work. That's okay, but I think you can cut down on the unnecessary questions to get that.

MR. JACKSON: Sure.

MR. MCGILL: That would also be with

23.

24 and 25 I don't think that's appropriate. I think we are really getting into their work. I think what do you do, what's the nature of your work, how long have you been working at that job, what have you done before, I think those three quick questions can handle that situation. I think going into the specifics, are you involved in supervision, administration, and so forth, just tends to make the voir dire longer than I think Your Honor wants.

MR. JACKSON: I appreciate the consideration of being as expeditious as possible, but I think nevertheless Mr. Jamal should be allowed to probe whether in fact the person works by themselves, whether they supervise someone, and how closely they supervise.

THE COURT: You can ask if he's in business for himself, that's a different story.

MR. JACKSON: Or if they work for someone, if they are in management.

THE COURT: You can just ask them that general question without going into detail into

what their occupation is.

MR. JACKSON: It's kind of difficult to pose in a questionnaire.

THE COURT: What I am trying to say is I will have to wait for one of the attorneys to object to a question before I can make a decision, because I don't know how you are going to phrase it.

MR. JACKSON: I understand, Your Honor.

MR. MCGILL: I think, Your Honor, the reason for this --

THE COURT: Is to try to narrow it down a little.

In my own mind I am trying to figure out what are the factors in the case and I think I have come up with at least five of them. Of course, there may be more that you can think of, but the main ones that I see is the possible knowledge that they may have about the incident as far as the news media is concerned and whether or not that is going to affect them in any way.

The second one is the possible prejudice here because the defendant is black and the victim was white.

MR. MCGILL: Or prejudice against police.

THE COURT: Well, that is another one.

The third one is their views on capital punishment, because that's an issue here.

Four, letting them know that there is a possibility of sequestration during the trial, because I think we are in agreement that once the jury is selected and the trial is going to begin it might be that they have to be sequestered because I don't know what the news media is going to say or do in the paper.

The fifth one was their views with regard to police testimony.

They were the five big factors that I saw that we should concentrate on.

MR. MCGILL: I think they are substantially covered in some of these questions.

THE COURT: I know that, but that's the general area that I think is involved in

this case.

Like you have questions in here about unions and about whether children should be bussed to school. That may be great socially to know all these factors, but it has nothing to do with this case.

MR. MCGILL: I object certainly to those two, Your Honor.

Again, I agree that those are the general areas.

I have no real problem either with No. 27, "If married, what kind of work does your spouse do?" He's an operator. She's a lawyer, whatever it is.

I think I would only ask that be limited to that.

THE COURT: Try to cut it down.

MR. MCGILL: Not get into anything specific or else we are going to be here a very long time.

THE COURT: That's why I had circled 32, because whether they are in a union or not, that has nothing to do with this case. It might apply on the Moran case but not necessarily in

this case.

MR. MCGILL: In fact, that is asked in that case.

THE COURT: 33, the same thing about the unions, and, 34, about the unions.

MR. MCGILL: 31 I think is out, if the spouse is retired or disabled or whatever.

MR. JACKSON: Is out?

MR. MCGILL: Yes. I don't see where that is relevant at all.

MR. JACKSON: What kind of work they do?

THE COURT: If you are going to ask what the spouse does, she doesn't work, she's a housewife, that's the end of that, or he may say, "Well, at one time my wife worked as a secretary or something." I don't particularly care.

MR. MCGILL: I will withdraw my objection, Your Honor.

THE COURT: What about 35, whether he served in the military? Is that important? Who cares whether he did or didn't.

MR. JACKSON: Your Honor, I think it may give us some indication of this person, what they did when they were in the military and it may give us some clue that may be developed as to that.

THE COURT: You can ask whether he was in the military police or something.

MR. JACKSON: Aside from the police. My view of the military people is that they are police anyway and there are some that are just assigned to do the arresting and the discipline. I think it's a paramilitary organization, and based on that --

THE COURT: But a lot of people were in the military simply because they had to be there.

MR. JACKSON: I understand that, Judge.

THE COURT: So what has that got to do with this?

MR. JACKSON: I just think there may be some possible attitudes that are developed or enhanced as a result of being in the military, and I think it would assist Mr. Jamal --

THE COURT: I don't have any objection if you are just going to ask the question, but if it becomes too prolonged, if anybody objects, I would cut it off.

MR. MCGILL: I would not object to No. 35, but the branch, drafting, were you involved in combat, all that I think is irrelevant and I would ask that they not be permitted to ask them.

MR. JACKSON: Whether or not they were involved in combat I think is an appropriate question, particularly where we have what the District Attorney is alleging is that there is a shooting and there was some sort of fight. I think that some indication of the person's experience with guns and/or fights might be appropriate.

MR. MCGILL: I would object to all of that, Your Honor.

One question, "Have you served in the military," maybe if you are to say, "When did you serve in the military, what branch" that's fine. But from then on I would object.

THE COURT: I don't think there is any military involved in this case at all. It has nothing to do with it.

How about 44? We are not in Florida. Do you want that? I think he will tell you that when you ask him his occupation.

MR. MCGILL: That's right, Judge, so I think it's unnecessary.

44 out, 45 out.

THE COURT: 46 is in because it's a general question that I am going to ask initially. You can follow that up from there when I ask that general question on law enforcement. So I don't think 46 is necessary. You will follow up on the question I ask.

MR. JACKSON: All right, sir.

MR. MCGILL: 47 is the same as 45.

THE COURT: Yes, because he tells us his occupation.

MR. MCGILL: I have no problem with 48.

THE COURT: I think that he will let us know when he tells us his occupation.

MR. JACKSON: Judge, my brother is an accountant and he swears he's a better lawyer than I am because he has taken several courses. That's what we want to find out, that we don't have any would-be lawyers serving as jurors who have taken courses. It happens all the time, Judge.

THE COURT: All right.

MR. MCGILL: I have no objection to that, Judge.

THE COURT: Go ahead.

MR. MCGILL: 49, okay.

MR. JACKSON: It's the general question that we ask.

MR. MCGILL: As long as you don't get too much into it.

THE COURT: It's not really necessary.

MR. MCGILL: How many children do you have? What their ages are, schools -- something like that I don't mind. If they are going to school or something like where do they go, that's all right.

In No. 50 I think that's an opinion

question, Your Honor, which I think is out.

THE COURT: That's out.

I don't know that we have to go into their level of education if they just answer the other question.

MR. JACKSON: These are just general questions.

MR. MCGILL: Again, I don't have a lot of problems with that, if they say, well, I have one in college, one 17. I have one 15.

What high school do they go to? -- I don't have any problem with that if he wishes to ask it.

No, excuse me. I do object to that. I object to the specific named school.

I do not have an objection as it is written in 52, public or private school. I have no objections to that.

THE COURT: Okay.

MR. MCGILL: List the schools, obviously I object to that.

54, 55, I object, all social questions.

56, reading, I object to that. I

object to all of those, anything to do with the newspaper and magazines.

I will be asking a question and I think the Commonwealth would have a right, I believe, Your Honor, to pursue this area if they know Mr. Jamal with his extensive background.

THE COURT: That will come up when I ask them if they know anything about this case. If they say yes, they saw something on television or heard something on television, something like that, if you want to go into that as to whether it somehow affects them.

MR. JACKSON: Your Honor, the questions with regard to the print media and later as well to the broadcast media have to do with some possible acquaintance or familiarity with Mr. Jamal, since he has written in the media.

THE COURT: That's what I say we can get in the general question.

But what television programs they like and what TV stations they watch and radio stations they listen to, that's --

MR. MCGILL: I would object to all that.

I believe Mr. Jamal has something to ask.

THE DEFENDANT: From 56 to 61 when it deals with newspapers, I think that speaks to the essential areas and issues that you addressed in terms of the news media.

THE COURT: If they say that, but whether they watch certain programs or not, you can ask them whether or not they know you from anything they may have seen or heard.

THE DEFENDANT: I am talking about 56 to 60. This is print media. What newspaper do you subscribe to? What newspaper do you read? You know it would be insane for us to sit here and act if people haven't read a newspaper.

THE COURT: That's what I am saying, what difference does it make what papers they read. The question is: Have they read anything in the paper that would prejudice you in this case? That's the important thing, not whether they read the Inquirer or Daily News.

What difference does it make? Or what radio stations they listen to. The question is whether they heard anything in the news media that will prejudice them against you; that's important.

MR. MCGILL: I agree with that. So I would essentially object, Your Honor, to 56 through --

THE COURT: All the way down to the bottom of the page not really necessary.

MR. MCGILL: No. 74 I have no objection that he ask that.

THE COURT: What's 74?

MR. MCGILL: "What civic, social or professional clubs or organization do you belong to?"

I have no objection to that.

THE COURT: Do you want to ask that question?

MR. JACKSON: Yes, absolutely.

THE COURT: Okay.

THE DEFENDANT: What did you say about 72, Judge? Don't you think that's important?

MR. MCGILL: I object to that.

THE COURT: That's a political question. It's not appropriate in this case. I don't care whether he's a conservative or a liberal or what he is. It doesn't make any difference.

No. 76, religious affiliation, is definitely out.

MR. MCGILL: The reason I would object to it on the record for 72, Your Honor, is not just as political, but it is such a broad and opinion question and there is such a considerable doubt as to what the real definition of any of those words are that I think it's at best confusing.

THE COURT: 76, 77, and 78 are definitely out. They deal with religion and that's not appropriate in the courtroom. The Courts have said that consistently.

MR. JACKSON: 79, Judge, with regard to hobbies.

MR. MCGILL: I would object to that.

MR. JACKSON: I was going to say that

I think that will give us again some indication of what the person's propensities and attitudes might be. It's not a question where we hope to probe at length. It's a question people put on their resumes. I don't think that it is private or offensive.

MR. MCGILL: I would object to that. I think that any of these questions are personal questions. I don't think they go to show whether or not a venireperson can be a fair and impartial juror.

MR. JACKSON: What do they do in their spare time?

I go out and I do target practice.

They may feel that they are just as expert as a ballistician, a Police Department's ballistician. It's only to bring up those things.

If they go sailing and skiing, fine, the question is over. We go right ahead. I think that provides us with an opportunity to again find out. That's a reason for the question. Their hobby may be relevant to some

issue that's in court.

MR. MCGILL: The reason I object is that I've actually agreed to several questions already and it's getting longer and longer. It's really not pertinent. I don't believe that's pertinent, because as you know, the voir dire portion of the trial is solely to determine whether a man or a woman can be fair and impartial.

THE COURT: That's right. Otherwise you can keep one venireperson on the stand all day long if you want to ask questions.

MR. JACKSON: Judge, it seems to me if this assists in the picking of the fairest juror, then it's time well spent. I don't mean that facetiously.

THE COURT: I know that, but if that were true then the Supreme Court would so rule, but they haven't. There's a lot of things that they said are unnecessary, for instance, whether or not a juror has served on a jury before. They say that is unnecessary. It doesn't have to be asked, but yet you have

people ask it all the time.

MR. MCGILL: I would say that I have an objection to that.

THE COURT: But I am saying they have already said that that's not important.

MR. MCGILL: The Supreme Court is very strict.

THE COURT: What he does in his spare time, what his favorite color is, what does that have to do with it, particularly if it is going to prolong this? -- because you have to realize you have a lot of people waiting here and they are going to be disgruntled.

MR. MCGILL: Judge, from 79 through 88 I would object to all those questions. Your Honor can look at them. I think they are opinion questions. I think the larger amount are irrelevant, and if it is relevant only marginally so.

I think that the Supreme Court message is that voir dire is not to be used for the purpose to determine who you wish to strike on your peremptory challenges. It is to

determine solely if they can be fair and impartial.

THE COURT: That's true. That's what I am saying.

MR. MCGILL: I think, Your Honor, based on that, all of them should be disallowed, 79 through 88.

MR. JACKSON: With regard to 79, I made my argument to why I feel it is necessary, because again it provides us an opportunity of really determining what the person does in their spare time. I don't think that this question provides any more advantage to the defense than it does the prosecution.

THE COURT: I realize that, Mr. Jackson, but I have ruled on it. It's on the record.

MR. JACKSON: You ruled on 79?

THE COURT: I ruled on all the way from 79 down to 88. They're personal questions and they have nothing to do with it.

MR. JACKSON: About their hobbies?

THE COURT: It's on the record and you

can make an issue of that if you think that it is necessary.

MR. MCGILL: 89, 90, and 91.

THE COURT: Even 89 the Supreme Court says doesn't have to be asked. It isn't relevant, but if you people want to ask it, okay. I'm trying to break it down a little bit so that this jury selection will be done hopefully in two weeks.

I think you are going to have a hard time getting a jury without asking all these questions.

MR. JACKSON: I agree, Judge.

MR. MCGILL: I think, Your Honor, 92, 93, 94, and 95, I think they can all be grouped together. I have no objection that they be asked, unless Your Honor feels that they are inappropriate.

THE COURT: What are you talking about, criminal complaint?

MR. MCGILL: Yes.

THE COURT: Have you ever filed a criminal complaint against anyone, period.

MR. JACKSON: Anyone.

MR. MCGILL: However, let me say that I object to 93.

THE COURT: If they said yes and he said what were the charges, what did you charge him with --

MR. MCGILL: For example, a woman.

THE COURT: She may say charged him with rape, but that will come out as a victim of a crime. That's what I am saying about a lot of these.

MR. JACKSON: Sometimes people don't characterize them as arrests, particularly those things over in City Hall Annex. They are complaints people just don't consider and it may be relevant. That's all. I don't think that it is going to be anything that's going to be stretched out, Judge. Again, it may be with some of the jurors the question would not be asked because it will come out from other questions. But we just want to know in a particular instance that question would be permissible and if it provides us with some means

to inquire.

THE COURT: What about 96?

MR. MCGILL: I don't think that's in,
Your Honor.

MR. JACKSON: Fine.

MR. MCGILL: 97 is already included
by you, but they can ask.

MR. JACKSON: Whatever.

THE COURT: He's talking about a
witness. In other words, I have said charged
with a crime. They may be a witness. That's
okay.

MR. MCGILL: No objection to that.

THE COURT: 100, "Have you ever
consulted a lawyer?"

MR. MCGILL: I object to all of those.

THE COURT: If it comes out in the
other portion, if you filed a criminal complaint.

MR. MCGILL: I would object to 101,
102, and 103.

Judge, also I object to the questions
and multiple-choice answers from 104 to 115. I
think they are social questions. They do not

belong in the strict requirements of what the purpose of the voir dire is.

MR. JACKSON: We have no argument to those, Judge.

I would now like to specifically direct Your Honor's attention to Part Two of the questionnaire contained in the American Journal of Trial Advocacy beginning on Page 55.

Unfortunately, I asked the crier to Xerox some pages and unfortunately not enough of the relevant pages. But I think we do have Questions 1, 2, 3, and 4, which Your Honor has before you.

THE COURT: Part Two?

MR. JACKSON: Yes, sir, starting with Question No. 1. I know Your Honor covers that to some extent and we don't want to repeat any questions. If Your Honor feels that your general question is going to cover that, we would have no objection.

MR. MCGILL: I think Your Honor usually handles No. 1 appropriately.

THE COURT: I try to cover that in my

general instructions, plus in my questioning of them.

MR. JACKSON: I understand, Judge.

THE COURT: If you feel that is necessary, I don't care.

MR. MCGILL: Perhaps, Your Honor, it is almost the standard question if both a police officer and a private citizen were to testify to the same set of facts and they would testify differently.

THE COURT: But would you believe them merely or solely because of his occupation as a police officer. I don't particularly care if you ask him that.

MR. MCGILL: If I can, Your Honor, I would object to the wording as expressed here.

THE COURT: I ask the question and I explain to them, you know, would you give any greater weight to his testimony merely or solely because of his occupation. It may be that after he hears the evidence that the juror may believe him, but that's a different story. That's based on other factors.

MR. MCGILL: As long as it is phrased, Judge, as-would you tend to believe the police officer over the civilian merely because he is a police officer, not just asking them who they are going to believe.

As it is worded on here, I think this is an inappropriate question under the Supreme Court rulings.

THE COURT: That's why I say ask the question, merely or solely because of his occupation as a police officer.

MR. MCGILL: So I don't mind that one question. I will not object to that one question. Of course, they might want to follow it up.

THE COURT: Depending on the answer.

MR. MCGILL: I may also have an opportunity to rehabilitate under the circumstances, but merely and solely are the words.

MR. JACKSON: We would skip, of course, 3 and 4 as they are inappropriate. 5, as well, since it refers to a civil matter. Mr. McGill

may not have that.

6 is omitted.

7 is omitted.

8 is omitted.

9: "Do you feel there can ever be circumstances in which a police officer is justified in shooting an unarmed person, yes or no?"

MR. MCGILL: Objection, Your Honor. I would object to that. That's going right into facts, asking him a hypothetical question.

THE COURT: I will sustain that.

MR. JACKSON: Fine.

No. 11: "Do you accept the law that police officers as well as private citizens must exercise extraordinary care in the use or operation of their weapons?"

MR. MCGILL: Objection, Your Honor.

THE COURT: You are going into factual situations that are not an issue.

MR. JACKSON: 12 and 13 are inappropriate; 14 as well.

Your Honor, the series of questions

that follow are questions that would demonstrate the attitudes of the prospective jurors. Again, consistent with the holding of the Court that you are permitted to inquire as to the attitudes, the prejudices and biases of the witnesses, we would suggest that these series of questions that follow would provide us with that information.

Do you want me to recite them?

MR. MCGILL: Let me just take a look at them.

THE COURT: He's talking about the second series of questions. He's talking about 552, all of those questions.

MR. MCGILL: I object to that. That goes into their opinion.

THE COURT: It goes into their opinions.

MR. JACKSON: Judge, those are opinions that may come up to show a bias.

THE COURT: Opinions you are not allowed too. The Supreme Court has already said that opinions are things that you are not to

allowed to go into.

MR. JACKSON: But, Judge, I think the Court makes a distinction between opinions, bias, and prejudice. Many times we call it opinion and in fact it's bias or prejudice. The only way we can make that determination as to whether it's an opinion or whether in fact it's prejudice or bias is to find out what it is.

THE COURT: No, I will not allow those questions to go in. Now you are going into the person's individual opinions, which is not appropriate. The Supreme Court has said it is not appropriate, and I will stand by that.

MR. JACKSON: So, Judge, you will so rule as to the third series of questions because it's pretty much the same?

THE COURT: Yes. You are going into their opinions on individuals, on what children should learn as far as respect for authority and all of that. Those are individual opinions that I think the Supreme Court has said is not appropriate.

MR. JACKSON: That completes all of

our printed questions. I believe Mr. Jamal has some additional questions that he would also like to interpose.

THE DEFENDANT: Some of these have been covered in the four basic areas that you spoke of. It would be if a potential juror knows either myself or Mr. Jackson, if so how.

THE COURT: Okay, sure. You would have to go into that area certainly.

THE DEFENDANT: Can you accept or follow the presumption of innocence?

THE COURT: Okay.

MR. MCGILL: Your Honor, I would object to that. I think that you handle that in terms of the law.

THE COURT: If they can follow the law as I give it to them.

MR. MCGILL: And going into specific areas, presumption of innocence, that has specifically been ruled on by the Court.

THE COURT: He means whether they can follow the law as I give it to them, as to the presumption of innocence.

MR. MCGILL: Yes, we would object to that question. I think Your Honor handles that in your general questions.

THE COURT: He can ask general questions, whether they would follow the law as I give it to them regardless of what they think the law should be otherwise.

MR. MCGILL: That would be fine. I have no objection to that question. But specifically going into it, I would object to that.

THE COURT: But whether or not they can follow the law as the Court gives it to them, whether or not they think the law should be otherwise, that's perfectly all right.

MR. MCGILL: So you are saying then that you are not permitting the question of specifically going into presumption of innocence?

THE COURT: That's right. But whether or not, as I will give them the law, whether they can follow that law as I give it to them regardless of what they may believe.

MR. MCGILL: Just the law generally.

THE COURT: That's right, the law generally.

MR. MCGILL: I think that's certainly appropriate.

THE COURT: That's all I'm going to give them. I don't go into the factual situation.

MR. MCGILL: The law of first degree murder, what third degree murder is?

THE COURT: That's inappropriate.

What else?

THE DEFENDANT: Did you say it was inappropriate?

THE COURT: The way I said you could do it. If you remember how I said it to you, Jackson will rephrase it for you.

What's the next question?

THE DEFENDANT: Do you believe I'm guilty?

THE COURT: Do you believe you're guilty?

THE DEFENDANT: Yes.

MR. MCGILL: I would certainly object

to that.

THE COURT: See, I will go into that. I tell them that the mere fact that you have been charged with a crime, you have had a preliminary hearing and all that is not evidence against you.

THE DEFENDANT: I guess the point is, Judge, that the weight of the mass news media has been so extensive.

THE COURT: That's a different question. You are asking whether or not the news media in any way prejudiced them against you.

MR. JACKSON: I think what Mr. Jamal is saying, and you certainly know, Judge, a lot of times you will tell them just because a person has been arrested and had a preliminary hearing all that is no indication of their guilt, you get a juror up there, "Do you think he's guilty simply because he is sitting there," what do they say? -- yes.

Judge, you know it happens. Mr. McGill knows it happens. It happens. They

still believe the person is guilty.

MR. MCGILL: The wording, "Do you believe I'm guilty" is --

THE COURT: Would you state the question?

MR. JACKSON: Do you believe that I'm guilty merely and solely because of the fact that I have been arrested and I stand before you charged with a crime, words to that effect.

MR. MCGILL: Your Honor, I would object to that wording as much as I would object to Mr. Jamal's wording. That is everything that the Supreme Court does not want to hear in terms of trying to get into the opinion of a juror.

I believe the appropriate question -- and I will because of the unique circumstances of this case that Your Honor ask this question or I may ask it -- "Do you have a fixed opinion of the defendant guilt or innocence?"

THE COURT: I do ask that general question.

MR. MCGILL: That is a question that

should be asked.

THE COURT: I do ask that general question, whether he has a fixed opinion at this time. I do ask that question. That's a general question that I ask.

MR. MCGILL: Well, the Supreme Court does not say guilt. A fixed opinion of guilt is what is appropriate for a challenge for cause.

I would ask that Your Honor ask this because the unique situation that we have, counsel who happens also to be defendant and asking the question, such personal communication with a particular witness would make it very difficult in my opinion for the juror to in fact be fair and impartial. That area can be covered, however, in a way which is in the middle of the road and fair to both parties, and that would be from your question.

THE COURT: I do ask that question

MR. JACKSON: I want to interpose two things. Number one, it appears as though counsel is suggesting those benefits that

Mr. Jamal gets out of representing himself will be disallowed. Those disadvantages that he gets as a result of representing himself should be allowed. I don't understand it. I mean, if he is going to gain some disadvantages for representing himself, he's taking that risk as well as the advantages. To say that you should ask the question as opposed to him because it seemingly suggests an advantage --

THE COURT: I say I do ask that question.

MR. JACKSON: But I just want to put that aside about whatever possible advantages he gets from asking questions.

The other thing is specifically with regard to do they think he's guilty because he stands before them charged with a crime I think is different than that fixed question, the question that Your Honor generally asks with regard to a fixed opinion of guilt or innocence. I know we are in a unique situation now and I know Your Honor has allowed that

question before and most judges have allowed it.

THE COURT: I don't allow it, let's get that straight. I don't allow questions beforehand. If nobody objects to a question, I'm not going to interject myself and say, "Hey, that question can't be asked."

If there is no objection to it, I don't make a ruling, because I am not going to make a ruling if I don't have to.

MR. MCGILL: Judge, I would like to say as far as this particular point we are obviously cutting out a number of questions primarily so that we can move ahead on voir dire as quickly as possible so that we can eliminate questions.

First of all, in reference to Mr. Jackson's comment about benefits and disadvantages, I think there's a considerable amount of advantages for a defendant in this type of case to represent himself. There's no question. In my opinion, the advantages far outweigh the disadvantages. However,

there are disadvantages and those disadvantages we have attempted to conduct a colloquy with Mr. Jamal to determine whether or not he still wishes to do this.

There is no way, Your Honor, that I will even consider agreeing, unless the Court would order me, to have this defendant, who is charged with murder and the Commonwealth is attempting to have a jury find him guilty of murder, that he himself ask each of those jurors, "Do you have a fixed opinion of my guilt or innocence?"

THE COURT: I will ask that.

MR. MCGILL: At this time, Your Honor, I think that is of considerable disadvantage to the Commonwealth.

THE DEFENDANT: Judge, obviously the Commonwealth has all of the advantages. The Commonwealth has all of the resources. Mr. McGill has a wealth of experience. I'm not a lawyer. I mean this is something --

THE COURT: That's not the point. The point is whether or not we can get a fair

and impartial jury. I
so that it won't be a
the other.

THE DEFEND

that you are going t
of the entire panel
questions that have bee
to individual venirepeople.

THE COURT: My position is if I had
asked the question and the jurors have
answered it, either by their silence or by
standing up, that's all that is necessary.
You don't have to repeat. There's no sense
in me asking questions if everybody else is
going to ask the very same questions.

THE DEFENDANT: Judge, this is a
case of repetition.

THE COURT: Yes, it is, because I
will ask that question.

THE DEFENDANT: It's clear I'm going
to be conducting a large part of this voir
dire.

THE COURT: Yes, and it's going to

take some time. We are not even getting anywhere here and we have people waiting out there.

All I can say is I will rule on individual questions as they are asked. If you want to make objections, either one of you, because I can see we are going to be here forever.

MR. MCGILL: I think we have almost come to the end.

THE COURT: All right.

What other questions do you have?

THE DEFENDANT: Well, I am still on the question about --

THE COURT: I have ruled on that one. I'm going to ask that question and that will be it.

Now, what other question do you have?

THE DEFENDANT: Do you believe policemen or policewomen are more believable than others?

MR. MCGILL: Objection.

THE COURT: I will ask that. I'm going to ask that question. I will ask it from both viewpoints to satisfy both sides.

THE DEFENDANT: Do you have a close relationship with an officer, civilian, military or government police?

THE COURT: I ask that question, and you will find that out, whether they do or they don't. Then you can follow it from there if you think it's necessary to go into details, like what is the relationship, is it just maybe a neighbor or a friend or is it a relative or a member of the family or something like that. So that area you will go into.

THE DEFENDANT: What are your attitudes toward the criminal justice system?

THE COURT: That's an opinion and that's out.

MR. JACKSON: Judge, should not there be some opportunity at some point to determine whether in fact just hates and can't stand our criminal justice system? -- because

as a result of that feeling or attitude, of course, it would be very difficult for them to, number one, follow the instructions of the Court and certainly to accept all that criminal justice provides.

MR. MCGILL: I object, Your Honor. It's really an opinion.

THE COURT: It's an opinion question. I think you can get that information from all the other questions that you are going to ask.

Anything else?

THE DEFENDANT: Do you believe I must be guilty otherwise I wouldn't be on trial?

MR. MCGILL: Object to that.

THE COURT: I am asking that question.

(Mr. Jackson and the defendant confer.)

MR. MCGILL: As a matter of fact, Your Honor, in the interest of practicality as well as moving this case along -- I know Your Honor has done it in some cases before

and other Courts often do it -- it may become necessary for the Court to handle all of the questioning if it goes too long.

MR. JACKSON: Your Honor, are we being threatened because he asks too many questions?

MR. MCGILL: Mr. Jacksons says threatened?

MR. JACKSON: It just sounds like with all these questions you are going to take over the questioning because Mr. Jamal is asking too many questions in order to find out whether or not someone is going to be a fair and just juror.

MR. MCGILL: If we can't get a jury in a reasonable amount of time.

MR. JACKSON: That sounds like a threat: If I ask too many questions, the Judge is going to do it.

THE COURT: I will take that phase under consideration later on.

MR. MCGILL: Many judges are starting to do that.

THE COURT: I know that, because we do have a problem.

MR. JACKSON: In capital cases?

THE COURT: Yes, in all cases.

MR. MCGILL: Some judges only allow one or two questions after they ask the questions.

THE COURT: If I were to ask all of the questions, I wouldn't want somebody to repeat the same. But if one of the answers from one of the questions suggests maybe another question, I have no objection to that. At this point I'm not going to interject myself, but I do have a problem with getting a jury. There's no doubt about it. We have to worry about where we are going to get a jury from.

MR. JACKSON: Judge, I want to clarify one thing. You indicated with regard to the question of a fixed opinion of guilt or innocence and whether Mr. Jamal is guilty or not. You indicated that you would ask the question from my recollection -- and Your

Honor can certainly correct me -- it's my recollection that you tell them merely because he's been arrested --

THE COURT: I said I will ask that question.

MR. JACKSON: I just want to be clear, Judge.

THE COURT: Anything else, gentlemen?

THE DEFENDANT: In your mind do I have to prove my innocence?

MR. MCGILL: Objection, Your Honor.

THE COURT: That's a question of law that I'm going to instruct the jury time and time again on.

You see, you can't be asking them questions about their opinions on the law because they don't know what the law is. We have to assume that they know absolutely nothing about the law and they are going to have to depend on me on that situation.

THE DEFENDANT: Have you or a member of your family ever been a victim of a crime?

THE COURT: We go into that. I go into all of that. Now, I won't go into details. You can go into the details, because with a whole panel it's hard to go into individual details because each one of them is going to be different. That's why you will be able to go into the details. Who it was, for instance, whether it was a member of family or friend, a very close friend; what type of a crime it was and stuff of that nature.

THE DEFENDANT: Have you ever had previous jury duty in a civil or criminal case?

THE COURT: That's part of the questions that we ask.

THE DEFENDANT: As I said, some of these are repetitious, but some of them obviously are not as well.

Have you ever been employed by the City of Philadelphia, including the Philadelphia Police Department or your spouse?

THE COURT: Well, as far as the

Police Department is concerned, that question will be covered.

MR. MCGILL: I think it also will be covered by what is your line of work, how long have you been there.

THE COURT: I cover it, because I ask them whether or not they are on the Police Department or whether a member of their family or very close friend is. So that will be covered. You will get that question generally covered.

When they answer that they do know someone in the Police Department, then you can get into that.

THE DEFENDANT: Obviously, the obvious questions are: What have you read or heard about the case in the media?

THE COURT: That's all going to be covered.

THE DEFENDANT: Have you read or heard about Move?

MR. MCGILL: I would object to that, Your Honor.

THE COURT: Move is not involved in this case.

THE DEFENDANT: I would obviously disagree, Judge. My involvement is central.

THE COURT: You may be involved, but what does it have to do with it?

THE DEFENDANT: Some of the descriptions offered by people, by Commonwealth witnesses. It's, well, we saw a Move member do so and so.

What do you mean "a Move member"?

He looked like a Move member. We saw his hair.

It's very clear that when witnesses get up and talk about they saw a Move member do certain things and no one else in the courtroom looks like a Move member except myself, or at least no one else in the front of the courtroom near the Judge, the District Attorney or court-appointed counsel, then that's going to have an obvious impact in terms of people's fixed opinions about Move, about an organization that I am closely affiliated

with.

MR. JACKSON: Judge, if I could just go on, just like Mr. Jamal is permitted to ask questions with regard to race, the significance of Move and aside from their political and theoretical principles, there is a unique physical look that Move members have, and I think to deny him an opportunity to delve into what people's opinions are would be synonymous to denying him to ask the question about race. It's there, Judge. For us to avoid it, I think it would be really a tragedy. It's there.

MR. MCGILL: Your Honor, I can see Mr. Jackson's and Mr. Jamal's position. The only real connection with Move that this case has, if this is a connection, is an appearance that Mr. Jamal wishes to have.

THE COURT: You mean his hair?

MR. MCGILL: Yes.

Secondly, the fact that that appearance in some way or other matches a description to a certain extent of witnesses is

strictly a factual issue to be determined by a jury and a credibility issue. The issue of Move in this case, I would submit to this Court, is entirely collateral. If it does become an issue, then the primary issue, that is, the guilt or innocence of Mr. Jamal, is unfortunately avoided.

THE DEFENDANT: I disagree.

THE COURT: What he means is the fact that he may look like a Move member, he doesn't want the jury, a potential juror to somehow be prejudiced against him.

Is that what you are saying?

MR. MCGILL: I'm saying, Judge, basically that I don't want the issue in this case to be what it isn't, and the issue in this case is not Move. Move has nothing to do with this issue.

MR. JACKSON: His race is not an issue either.

MR. MCGILL: Mr. Jackson, I don't believe his race is an issue in here at all. I would be the first to say it.

However, the Supreme Court has definitely stated the proper question in terms of race would be whether or not you have something against a race of a person. If he says in so many words, if he would say is there anything about my appearance, my race or my appearance that in any way would prevent you from being fair and impartial in this case, that would cover it.

The mentioning of Move brings in other matters. This is not a s'ge from Philadelphia Police and Move that happened in the James Ramp case where obviously Move was very much involved in that, as their philosophy was, throughout the number of years or days or months that were involved. That obviously is an issue of Move there. In this there's no issue. It's a police killing. Did he or did he not do it, that's what the issue is.

The fact that he has made the decision to wear his hair a certain way, fine. It has nothing to do with the fact that

whether or not individuals are for or against an organization.

MR. JACKSON: Your Honor, again the question, is there anything about my appearance, that isn't going to do it, even my hair. It seems to me that with regard to the whole Move circumstance there are fixed opinions about Move, and for us to even think that there aren't fixed opinions I think is to avoid the issue.

I agree that Move is a collateral issue, just like whether or not someone is a police officer or is related to a police officer is a collateral issue. But what that does is give us an opportunity to independently determine whether in fact this person has a bias, a prejudice or some predilection that would bare itself to the detriment of Mr. Jamal.

Commonwealth vs. Christian, Your Honor, is a 1978 case, which indicated that the Courts should allow defense counsel to delve into those areas that might expose a bias, a

prejudice or predilection. I think that this whole area of Move is certainly one that's appropriate.

THE COURT: Just what was your question that you wanted to ask?

THE DEFENDANT: What have you read or heard about Move?

THE COURT: That's a general question.

MR. JACKSON: What is your feeling about Move? What is your attitude?

Perhaps what we are asking is Your Honor to help us fashion some questions that will give rise. We can certainly give Your Honor some suggested questions with regard to the Move situation.

MR. MCGILL: Your Honor, I understand clearly what they intend to do, Mr. Jamal and Mr. Jackson. I would object to it as not being relevant for this trial.

The questions of getting opinions on Move, getting opinions on what you have read about Move, it is so broad and so general that,

if anything, it takes that juror, places him away from what he is used to, and takes him from that chair and says, "Now, you don't know this, but Move is involved somehow in this case. So what do you think about Move?"

Well, hey, there's nothing to do with Move in this case, nothing to do with Move in this case except the way this gentleman looks.

THE COURT: I understand that in the Ramp case, because it was a definite issue.

MR. MCGILL: I think the Court would be forced basically indirectly through the jurors who will decide this case of inserting an issue which is totally collateral. I believe that that will be to the detriment actually of both.

THE COURT: I don't think it's involved in this case.

MR. JACKSON: Judge, that's just the point, it is.

THE COURT: No, isn't.

MR. JACKSON: He has an appearance, he has an association with Move. The case law

says, Judge, that you should be able to get into it.

THE COURT: You can ask whether or not his appearance in any way would be prejudicial.

MR. JACKSON: Judge, you are saying that we just generally tell the jurors what we are talking about. I'm saying we should be specifically able to ask that, because that's what Commonwealth vs. Christian says, that you should be able to go in and develop that prejudice.

THE COURT: If there is an issue, but there is no issue of Move in this case.

MR. JACKSON: Judge, what allows us to ask the question on race?

THE COURT: Only because the victim happens to be white, and that's the only issue that I see, whether or not anyone might be prejudiced.

MR. JACKSON: No, sir. Even if all parties are black you can ask that question.

I'm saying Move does exist in

Philadelphia. We can't ignore it.

THE COURT: So do a lot of things exist in Philadelphia.

MR. MCGILL: Let me break in, perhaps there is a way.

Judge, even assuming the parallel to race that was mentioned by Mr. Jackson, you do not ask the question what do you think about black people or what have you read about Orientals or what have you read about Koreans or something like that. You don't do that. Those questions are improper. There are very specific and direct questions that deal with that, and that's because of the problem over the past years that the Constitution and the Supreme Court are trying to resolve in relation to black Americans, black citizens.

In reference to Mcve, Your Honor, however, I believe that the connection with Move only becomes relevant marginally by his appearance or by something that they may have read about him, one or two things. If they know that Mr. Jamal has represented the

position and has reported on the position of Move over the number of years, to that extent it may make them relevant. But the way to handle that would be two ways: Number one, is there anything at all that you have read about me that would in any way influence you so that you could not be fair and impartial?

THE COURT: Are you saying read or heard?

MR. MCGILL: Read or heard.

Secondly, is there anything at all about my appearance, my hair?

He knows people somehow might think of Move. They might say that it may also be other groups, other types of organizations other than Move that have hair somewhat similar.

So maybe the question should be: Is there anything about my appearance, specifically my hair, that in any way would prevent you from being fair and impartial as a juror in this case? Answer: Yes, or no. Without going into all the social questions

which would be collateral.

There are more dangers to both parties, Your Honor, going directly into Move than handling it this way, which is the only way in which the jurors could have contact with it, either by word of mouth, by newspaper or radio or by appearance. That can be handled that way. So I think both ways can be reached without the collateral issue being emphasized.

THE COURT: All right.

MR. MCGILL: Would you agree to that?

THE COURT: I will agree to allow that.

(Mr. Jackson and the defendant confer.)

MR. MCGILL: I have one other question that I want to ask Mr. Jackson and Mr. Jamal before they leave. This has to do with what he said. I had a point that I was going to make.

Now, you mentioned George Fassnacht. I have not received any reports at all, Judge.

So what I would like would be this: I would like the Court to order if there is a report or will be a report and he is going to be a witness, I would like the Court to order that I get Mr. Fassnacht's report by this Friday, since I gave all my discovery material months ago, or else I will at the time that he attempts to testify make a motion to the Court to exclude his testimony.

Is he going to testify or not? If he's not going to testify, then that's something else.

MR. JACKSON: Judge, two things: Number one, we don't know that he is going to testify. Number two, I have told Mr. McGill consistently that there is no report. Mr. McGill knows that. Mr. Jamal is now representing himself and Mr. Jamal has never even spoken to Mr. Fassnacht by virtue of the problems up at the Sheriff's Office and the prison. So to ask that and then to suggest that he is going to ask Your Honor to order Mr. Jamal how to prepare his defense I

think is an affront and I resent it.

THE COURT: Why don't you have somebody interview Fassnacht?

MR. MCGILL: He was saying, in other words, I am precluded from --

MR. JACKSON: You are ordering the Judge to tell Mr. Jamal how to prepare his defense.

MR. MCGILL: I am asking the Judge to order Mr. Jamal, whether he represents himself or not, to comply with the rules of discovery. Those rules include the remedy that if the Commonwealth is not supplied with those parts of discovery which they are entitled, such as scientific reports, a ballistics report, written or oral report, then the remedy is to exclude you from using it. So you are well advised at this point.

MR. JACKSON: I have gotten no report. Up to this point I have no report, written or oral. Mr. Jamal has never even spoken to Mr. Fassnacht, through no fault of his own. So there is nothing to provide.

For some reason there seems to be some suggestion that we are withholding something back. There is nothing to hold back. As a member of the bar of this Court, I am saying there is no report. I will say that as many times as you ask me.

MR. MCGILL: He was engaged about three months ago.

MR. JACKSON: No, he was not, because as you know the Court has never paid him his money.

MR. MCGILL: That was two months ago.

MR. JACKSON: It might have been two months ago. We still don't have any money, the same as other experts. That's our problem. I will ask Mr. McGill to give me \$350.

MR. MCGILL: From Judge Ribner you got \$350 to pay for that expert, did you not? The Court ordered that.

MR. JACKSON: Yes, you're right.

MR. MCGILL: The Court ordered that.

MR. JACKSON: That's what he said he

would do. Since that
to him because now Mr.
haven't talked to him.

MR. MCGILL: J
saying that if he intends
George Fassnacht at this p
terms of discovery unless I . the
record by this Friday I will ask the Court --
and I am making both of you aware of it --
to exclude his testimony.

MR. JACKSON: We have no problem
with that. For some reason you seem to think --

THE COURT: He just wants to get it
on the record.

MR. JACKSON: There is no problem.
If there is something, I will get it.

MR. MCGILL: Even if there is an
oral report I want to get it.

(End of in-chambers conference.)

(The jury panel enters the
courtroom at 12:00 P.M.)

MR. MCGILL: Good morning, Your
Honor.

Your Honor, the Commonwealth moves to trial in the case of Commonwealth vs. Mumia Abu-Jamal. This will be '82, 1st Term, Bill No. 1358 charging murder, Bill No. 1357 charging possession of instruments of crime generally.

Your Honor, the Commonwealth is prepared to proceed.

THE COURT: Ladies and gentlemen, you have been summoned to this courtroom as prospective jurors in the case of Commonwealth vs. Mumia Abu-Jamal, who is charged with the crime of murder under Bill No. 1358, January Term of 1982, and possession of an instrument of crime under Bill No. 1357, January Term of 1982.

I want to say at the outset that if you are selected as a juror during the course of this voir dire you will be sent home with certain directions. However, I feel that it is only fair to let you know at this time that at the time that the trial commences it is very possible that you will be sequestered during

the course of the trial. By that I mean you will be kept at a local hotel and fed at the expense of the City of Philadelphia. I think it's only fair that you know that at this time.

The jury will be chosen from the members of this panel, or if this panel is exhausted before the required number of jurors has been selected an additional panel will be summoned.

You will be undergoing a preliminary examination by me and then an individual examination by the attorney for the Commonwealth and the defense. This is known as voir dire, which is the French word for "see and tell."

We may ask you personal questions. The purpose of these questions will not be to pry into your personal and private lives, but to get 12 jurors and four alternates who will be fair and impartial. The questions asked will be strictly confined to disclosing qualifications or lack of qualifications of a

juror and whether or not any prospective juror has formed a fixed opinion or may be otherwise subject to disqualification for cause.

In addition, the Assistant District Attorney and the defense have the right of peremptory challenge, which each side may exercise without disclosing or indicating the reason therefor. Each side is entitled to 20 peremptory challenges.

The jury will be the sole judge of the facts. You will determine all factual issues.

As to the law in the case, you must take the law as the Court gives it to you and apply that law to the facts as you determine them to be from the evidence presented in this courtroom during the course of this trial. If the Court is mistaken on the law, that will be corrected on review or appeal.

You must approach service in the trial of this case with a clear understanding and acceptance of certain basic principles

which are in part the law of every criminal court trial. The defendant was arrested, given a preliminary hearing, and subsequently Bills of Information or formal charges were filed by the District Attorney. Now, this is standard procedure. From it you are not to draw any inference and certainly no inference and certainly no inference unfavorable to the defendant. You are to ignore it in determining the guilt or innocence of this defendant.

The fact of arrest, preliminary hearing, or Bills of Information should not lead you to believe that the defendant must be guilty of something or he would not be here today for trial. The defendant and every defendant for that matter is presumed to be innocent. The cloak of innocence remains throughout the trial until and unless you conclude based on careful and impartial consideration of the evidence presented during your deliberations that the Commonwealth has proven him guilty beyond a reasonable doubt.

The Commonwealth has the burden of

establishing the guilt of the defendant beyond a reasonable doubt. This does not mean beyond any doubt or all doubt or to a mathematical certainty, but beyond a reasonable doubt. This term will be defined in the course of my charge at the conclusion of this trial. This burden of proof continues throughout the trial and remains to all the elements of the crimes charged against the defendant.

The defendant does not have to take the stand or produce testimony in his own defense. This must be clearly understood and accepted by you. You are to draw no inference and certainly no unfavorable inference from this.

You will attach no greater weight to the testimony of a police officer or a detective simply or merely because of his occupation as a police officer or detective. All witnesses called by the Assistant District Attorney and the defendant will be given the same scrutiny and evaluated on an individual basis using the guidelines I shall give you in

more detail during my charge at the conclusion of this trial.

Basically what I am saying to you is this: That you give no greater weight to the testimony of an individual simply or merely because of his status or occupation in life. It makes no difference whether he be an elected official, such as the Mayor, or whether he be a professional man, such as a doctor, dentist, lawyer, clergyman or even a judge for that matter if he should testify, or whether he just be an ordinary working individual. You will take all individuals as they come. You will listen to what they have to say, their demeanor on the witness stand, how they say it. As I said to you before, I will give you more details later on in the trial in order to judge their credibility and weight of that witness, but you do not do it simply because of his status or occupation in life.

Starting now and regardless of whether or not you are selected as a juror, you are not to discuss the case with anyone,

not even among yourselves. Do not permit anyone to speak to you about it. If anyone tries to contact you about this case, you are to let me know immediately.

The defendant is entitled under the law to have his guilt or innocence determined by 12 competent, fair, impartial and unprejudiced jurors. A fair, impartial and unprejudiced juror is one who has no feeling or bias, prejudice, or partiality toward the defendant or toward the victim of the alleged crime or toward any of the witnesses who will testify in this case, and who has no fixed opinion as to the guilt or innocence of the defendant at this time and who will determine his guilt or innocence solely upon the evidence presented in this courtroom during the course of this trial and the law applicable to the evidence as expounded by the Court.

I have already given you certain preliminary instructions so that you will better understand the questions which will be

directed to you either as a group or individually.

For the purpose of saving time in the selection of the jury from this panel I shall address certain questions to the entire panel as a whole. If any of the questions which I ask applies to any member of the panel, I direct such person or persons to rise and give his or her name to the court officer. If no member of the panel rises, I shall conclusively assume that the question does not apply to any member of the panel. If one or more members of the panel rises, I shall conclusively assume that the question does not apply to any other member of the panel who does not stand.

It is important, therefore, that if any of the questions which I ask applies to any member of the panel he or she identify himself or herself to the court officer.

(Jury panel sworn.)

(Side-bar conference in the presence of The Court, Mr. McGill and Mr. Jackson not

reported.)

THE COURT: My first general question to the entire panel as a whole: Has anyone been unable to understand everything that I have said so far? If so, would you please rise and give your name to the court officer.

Let the record indicate that no one has risen.

My next general question: Do you, any of you, have any physical or mental disability which would prevent you from hearing and concentrating upon the testimony of the witnesses, the addresses of each counsel, and the instructions of the Court? If so, would you please rise and give your name to the court officer.

Let the record indicate that no one has risen.

My next general question: Have any of you or any member of your immediate family, very close relatives or very close friends, ever been the victim of a crime of

violence? If so, would you please rise and give your name to the court officer.

COURT OFFICER: Your Honor, Page 1, No. 369, Catherine M. Tatem. Page 3, Your Honor, No. 201, Samuel R. Kyle.

Page 3, Your Honor, Juror No. 25, Eric Birnbaum.

Your Honor, Page 2, No. 432, Victor Brody.

THE COURT: My next general question: Have any of you or any member of your immediate family, very close relatives or very close friends, ever been charged with a crime? I'm not talking about traffic tickets. If so, would you please rise and give your name to the court officer.

COURT OFFICER: Page 3, Your Honor, No. 71, Delores Coleman.

Page 3, Your Honor, No. 301, Shirley Robinson.

Page 3, Your Honor, Juror No. 201, Samuel R. Kyle.

THE COURT: Let me remind you that

the verdict of a jury must be unanimous.

Also let me instruct you that in your deliberations as jurors you have a duty to consult with one another and to deliberate with a view to reaching a unanimous agreement if it can be done without violence to your own individual judgment. That is to say, each juror must decide the case for himself or herself, but only after an impartial consideration of the evidence with his or her fellow jurors.

In the course of such deliberations a juror should not hesitate to reexamine his or her own views and change his or her opinion if convinced that it is erroneous. But no juror should surrender his or her honest conviction as to the weight or effect of the evidence or as to the guilt or innocence of the defendant solely because of the opinion of his or her fellow jurors or for the mere purpose of returning a unanimous verdict.

Therefore, the question which I am now directing to each member of the panel is

whether you would follow these instructions of the Court. If any member of the panel would not follow these instructions of the Court, would you please rise and give your name to the court officer.

Let the record indicate no one has risen.

My next general question: Are any of you personally employed as a policeman, detective, or law enforcement agent, or have any of you ever been so employed at any time during your life or are any of you very closely related to or very closely associated with any policemen, investigating or law enforcement officer? If so, would you please rise and give your name to the court officer.

COURT OFFICER: Your Honor, Page 1, No. 279, Robert Peterson.

Page 3, Your Honor, No. 201, Samuel Kyle.

Your Honor, Page 1, No. 369, Catherine M. Tatem.

Page 1, Your Honor, Juror No. 223,

Joan C. Malone.

Your Honor, Page 2, No. 532,

Patricia A. Vogel.

Page 1, Your Honor, Juror No. 171,

Louis Innamorato.

Your Honor, Page 3, No. 28, Louis

J. Bogner.

Page 1, Your Honor, Juror No. 143,

C. Greiner-Galiczynski.

Your Honor, Page 1, No. 179, Emogene

Johnson.

Your Honor, Page 2, No. 93, Gladys V.

Dellarciprete.

Your Honor, Page 2, No. 48, Louis J.

Buongiorno.

Your Honor, Page 2, No. 374, John C.

Thompson.

Your Honor, Page 3, No. 340, Dorothy

F. Snyder.

Page 2, Your Honor, Juror No. 197,

Leroy Kleinguenther.

Page 1, No. 64, Eileen E. Citino.

THE COURT: My next general question

is not only applicable to the ladies and gentlemen who rose in response to the last question, but to the entire panel as a whole.

Would you consider the testimony of a policeman or other law enforcement official more worthy of belief or less worthy of belief merely because or solely because of his occupation as a policeman or law enforcement officer? If so, would you please rise and give your name to the court officer.

Let the record indicate that no one has risen.

My general question: Would any member of the panel suffer any serious hardship in sitting on this jury? If so, would you please rise and give your name to the court officer.

COURT OFFICER: Your Honor, Page 2, No. 432, Victor Brody.

Page 2, Your Honor, No. 48, Louis J. Buongiorno.

Page 3, Your Honor, Juror No. 340, Dorothy F. Snyder.

Your Honor, Page 2, No. 529,
Benjamin E. Cohen.

THE COURT: The defendant in this case is of the black race, while the victim of the alleged crime was of the white or Caucasian race. Do any of you who are of the white race have any feelings against the defendant or any fixed opinion of his guilt because of his race or color? If so, would you please rise and give your name to the court officer.

Let the record indicate no one has risen.

My next general question: Do any of you have any fixed opinion upon the guilt or innocence of this defendant, or do any of you know of any reason why if you are selected as a juror in this case you could not give either this defendant or the Commonwealth a fair and impartial trial? If any of you have any fixed opinion upon the guilt or innocence of the defendant or if any of you know of any reason why you could not give him a fair and impartial

trial, would you please rise and give your name to the court officer.

Let the record indicate that no one has risen.

Now, you remember that I initially told you that one of the basic principles of law is that the defendant is presumed innocent. The mere fact that he is charged with a crime and has been given a preliminary hearing and Bills of Information or formal charges have been filed against him are not evidence of guilt.

Therefore, my question to the entire panel is this: The mere fact that the defendant is sitting here now charged with a crime, do any of you believe that he must be guilty of something or he would not be here for trial? If so, would you please rise and give your name to the court officer.

COURT OFFICER: Page 2, Your Honor, Juror No. 197, Leroy Kleinguenther.

THE COURT: Ladies and gentlemen of the jury panel, this case involves the shooting

death of one police officer Daniel Faulkner from the 6th Police District which allegedly occurred on December the 9th, 1981, at 13th and Locust Street at approximately 3:56 A.M.

Does anyone on this panel know anything about this case or have read anything about the case or heard anything about the case? If so, would you please rise and give your name to the court officer?

Let's do this in the reverse order instead of doing it that way.

Is there anyone on this panel who has not read anything about the case or heard anything about the case or knows anything about the case? If so, would you please rise and give your name to the court officer.

COURT OFFICER: Your Honor, Page 2, No. 394, Kenneth R. Warner.

THE COURT: Therefore, the Court can assume that except for that one individual juror everyone else has either heard something about it or read something about the case or knows something about the case.

I would like to, first of all, introduce the Assistant District Attorney who will be handling this case, Mr. Joseph McGill.

Does anyone on this panel know Mr. McGill? If so, would you please rise and give your name to the court officer.

Let the record indicate no one has risen.

I forgot to ask that question of myself. Let me introduce myself again. I'm Judge Albert F. Sabo.

Does anyone on this panel know me personally or have had any personal or professional or social dealings with me at any time? If so, would you please rise and give your name to the court officer.

Let the record indicate no one has risen.

The defendant in this case, Mr. Mumia Abu-Jamal, would you stand up, please.

Does anyone on this panel know the defendant personally or have had any social dealings or anything at all with him at any

time? If so, would you please rise and give your name to the court officer.

Let the record indicate no one has risen.

Anthony Jackson, an attorney, does anyone know Mr. Jackson personally or had any social or professional dealings with him at any time? If so, would you please rise and give your name to the court officer.

Let the record indicate no one has risen.

I'm going to read off a list of names to you, the purpose being to ascertain whether or not you know of any of the names that I read off. Some of them may be witnesses in the case and others, even though they may not be witnesses, their names may come up during the course of the trial, the purpose being to ascertain whether or not you might know any of the individuals involved.

As to police officers: Inspector Alfonso Giordano from Command Inspection, does anyone know him?

(No response.)

THE COURT: Police Officer Gary Bell,
B-E-L-L, of the 6th Police District.

As I call out the names, if anyone
knows them, just stand up and I will stop
immediately.

Police Officer Carolyn Khinn, K-H-I-
N-N, 6th Police District.

Police Officer John McGurk, M-C-G-U-
R-K, 6th Police District.

Police Officer Robert Shoemaker,
S-H-O-E-M-A-K-E-R, Stakeout.

Police Officer James Forbes, F-O-R-B-
E-S, Stakeout.

Police Officer Roy Land, L-A-N-D,
Mobile Crime Unit.

Detective William Thomas from
Homicide.

Are any of these officers in the
courtroom? If you are, will you stand up and
walk up to the front so that the jurors can
take a look at you and maybe they can recognize
you by seeing you rather than your name.

This is Detective William Thomas,
Homicide.

Detective James Morton, M-O-R-T-O-N.
Sergeant Herbert Gibbons,
G-I-B-B-O-N-S, Homicide.

Detective Douglas Culbreth,
C-U-L-B-R-E-T-H, Homicide. He's coming up
front now. Does anyone recognize him?

(No response.)

THE COURT: Dr. Charles Tumosa,
T-U-M-O-S-A, criminalist, works at 8th and
Race. He's not here. Does anyone know him?

(No response.)

Dr. Regina Cudemo, C-U-D-E-M-O,
Jefferson Hospital. Does anyone know her?

(No response.)

THE COURT: Dr. Anthony Colletta,
C-O-L-L-E-T-T-A, Jefferson Hospital.

COURT OFFICER: Your Honor, Page 2,
No. 342, Barbara Spaeth.

THE COURT: Dr. Bruce Jarrell,
J-A-R-R-E-L-L.

Dr. Paul Hoyer. He's from the

Medical Examiner's Office. Does anyone know him?

(No response.)

THE COURT: Mr. Larry Paul, P-A-U-L, from Ballistics.

Mr. William Carlin, C-A-R-L-I-N, from Ballistics.

Mr. George Fassnacht, F-A-S-S-N-A-C-H-T, a ballistician. Does anyone know him?

(No response.)

THE COURT: Mr. Robert Chobert, C-H-O-B-E-R-T.

Detective James Morton, M-O-R-T-O-N, Homicide.

I think I already called him out.

Mr. Albert Magilton, M-A-G-I-L-T-O-N.

Mr. Mark Scanlan, S-C-A-N-L-A-N.

Ms. Cynthia White, W-H-I-T-E.

Ms. Priscilla Durham, D-U-R-H-A-M.

Mr. James LeGrand, L-E-G-R-A-N-D.

Police Officer Gwen Thomas, T-H-O-M-A-S. She's in the courtroom. Would you take a look to your left.

Mr. Robert Greer, G-R-E-E-R.

Mr. William Peraneau, P-E-R-A-N-E-A-U.

Robert Pigford, P-I-G-F-O-R-D.

Desi Hightower, H-I-G-H-T-O-W-E-R.

I think I have called them. If I missed anyone, gentlemen, let me know.

MR. MCGILL: Your Honor, three of the police officers came in.

THE COURT: This is Officer James Forbes. Does anyone know him?

(No response.)

THE COURT: The second officer, Officer Robert Shoemaker. Does anybody know him?

(No response.)

THE COURT: The third officer is Officer John McGurk. Does anyone know Officer McGurk?

(No response.)

THE COURT: Let the record indicate that no one has known anyone, except Juror No. 342, Barbara Spaeth, who knows Dr. Colletta.

MR. MCGILL: Your Honor, I think the

other side of the list there may be a few names.
They will testify.

THE COURT: Mrs. Maureen Faulkner.

Are you in the courtroom? Could you
step up here so the potential jurors can see
you?

Does anyone know Mrs. Maureen
Faulkner?

Let the record indicate no one has
risen.

Mr. Thomas Faulkner.

MR. MCGILL: He's not here.

THE COURT: Does anyone know Mr.
Thomas Faulkner?

Do you know Thomas Faulkner?

NO. 71: You said Desi Hightower?

THE COURT: Desi Hightower.

NO. 71: I know a Desi Hightower,
but I don't know if it's the same one.

THE COURT: We will take your name
just to play it safe.

COURT OFFICER: Page 3, Your Honor,
Juror No. 71, Delores Coleman.

THE COURT: For the record, once again does anyone know Mr. Thomas Faulkner?

Let the record indicate no one knows Mr. Faulkner.

Mr. Pat Faulkner, would you step up to the front, please?

Jurors would you look to your left. Do you know Mr. Pat Faulkner? Does anyone know Mr. Pat Faulkner?

Let the record indicate no one has risen.

MR. MCGILL: They are the only relatives that will testify, Judge, as far as I know.

THE COURT: Does anyone know the victim in this case, the police officer, Mr. Daniel Faulkner?

Let the record indicate no one has risen.

What we are going to do is call you into the courtroom individually for an individual voir dire of each juror.

I want to say to you, although I know

you know, perhaps you may know from what you read in the papers and what you may have heard on the news media, whatever it is, I want you to keep it to yourself. I don't want you to discuss it among yourselves. You will be questioned on that when you appear individually in the courtroom.

I'm going to excuse you to let you go to lunch and have you back here at five minutes to 2:00.

Please remember what I have told you all along. Please do not discuss the case with anyone, not even among yourselves.

You are excused until five minutes to 2:00.

(Jury panel leaves the courtroom.)

(Luncheon recess.)

AFTERNOON SESSIONS

(In-chambers conference in the presence of The Court, Mr. McGill, Mr. Jackson, and Joseph DiStefanis, Chief Inspector, Sheriff's Department, Philadelphia County,

reported as follows:

THE COURT: I want to put on the record that Mr. Jackson, Mr. McGill and I are back here without the defendant.

You mentioned to me about Mr. Jamal not getting any lunch down here.

MR. JACKSON: Yes.

THE COURT: I had the inspector check into it, so he can tell you for the record.

MR. DiSTEFANIS: The way I get it, he hasn't been bringing any food down all week.

MR. JACKSON: I have seen him bring food. He has brought it into the courtroom with him.

MR. DiSTEFANIS: I don't know how he got it, because our men won't let him take it into the vehicle.

MR. JACKSON: One day he had a banana. While he was cross-examining a witness he took it out and put it on the table.

MR. DiSTEFANIS: I don't know how he got it. What happened this morning is that he

had a bag of food and, of course, they wouldn't let him take it on the bus.

I believe I was in Judge Ribner's court when he made that motion. I believe Judge Ribner never issued an order to the sheriff to that effect. He issued it to the prison about having fresh foods.

MR. JACKSON: I don't contest that. What he is saying is that he has it up at the prison. When he comes down here, he can't bring his food with him.

MR. DISTEFANIS: That's the orders from the sheriff, that we have hot food for these people.

MR. JACKSON: I understand your position. Mr. Jamal is simply saying that that's not the food that he eats, and that since he has food at the prison can't he bring the food with him or have someone bring food to him while he is here during the day. He has nothing to eat. That's his position.

THE COURT: You mean he wants to eat raw vegetables?

MR. JACKSON: Or fruit. I don't know exactly what a luncheon meal is, but he is saying that the alternative, if he can't bring his food down, if someone can bring it to him or somehow be made available to him here in City Hall.

I don't know how to resolve it, Judge, but again consistent to what he is eating up in the prison I don't think that it's that much of a problem.

MR. DiSTEFANIS: My people are saying that under the Federal Court order, I think it was Judge Hannum issue an order that that food doesn't constitute his religion. I think Move members went to Federal Court at that time and Judge Hannum issue an order that it doesn't have to bring it down, it's not a religion, or whatever his order was.

THE COURT: I don't think we need an order of any kind. I will be glad to talk to Owens. If they have this fruit available for him that he wants, I will ask the sheriff to bring it down.

MR. JACKSON: That's all. He's got his food at the prison. That's not the problem.

THE COURT: What does he eat at the prison?

MR. JACKSON: Fruit and raw vegetables.

THE COURT: Is that all?

MR. JACKSON: That's all.

I think the problem is the Sheriff's Department doesn't want him to bring it on the bus with him. I don't know if it makes a difference.

MR. DiSTEFANIS: For the simple reason other defendants see it and I have a problem.

MR. JACKSON: I understand your reason for it.

THE COURT: What we can do -- the other people won't see it. They won't even know about it. You can have your sheriffs just take it and keep it in their custody. They won't know who the food belongs to.

MR. DiSTEFANIS: They will know as soon as he comes out of the receiving area. He will come out with other defendants.

THE COURT: He will what?

MR. DiSTEFANIS: He will come out with other defendants.

THE COURT: He won't have this bag. Your people will have that bag at all times. Your people will have the fruit or whatever the prison gives you to take down. He won't have it in his possession and they won't see it. The only time he will get it is during the lunch hour, like when you have lunch. When you feed the other prisoners, you give him whatever is in that bag.

MR. DiSTEFANIS: If you will issue an order by the clerk.

THE COURT: Do you want an order or do you want to do it on your own as a gentleman's agreement?

MR. DiSTEFANIS: I would rather have an order, because my men are under orders not to do it. If I have an order, then we have a

Court order.

MR. JACKSON: As a practical matter, the food that he gets up at the prison is in his cell. I don't know if he has bags. I'm bringing it up because I don't know.

MR. DiSTEFANIS: There are other problems that we are having here. What with prisoners bringing stuff, they stop up our toilets and our sanitation. They throw the skins or whatever they have into the toilet and it stops up the whole operation.

THE COURT: You tell him that he can't do that. If he does it, then I will revoke the order; it's as simple as that.

MR. DiSTEFANIS: I'm not talking about Mr. Jamal doing that; I don't think he would, but other defendants.

But we will supervise the feeding.

THE COURT: You supervise the feeding and then there is no problem.

(End of in-chambers conference.)

THE COURT: Mr. Jackson, is your client familiar with the procedure, the

alternating?

MR. JACKSON: He is, Your Honor.

THE COURT: All right.

COURT OFFICER: No. 68, Janet Coates.

MR. MCGILL: Your Honor, may I see you at side-bar with Mr. Jackson?

(Side-bar conference in the presence of The Court, Mr. McGill and Mr. Jackson not reported.)

...JANET COATES...

THE COURT: Commonwealth.

BY MR. MCGILL:

Q Is that Mrs. Coates?

A No, Miss.

Q Good afternoon, Miss Coates. I have to ask you some questions, and then Mr. Jamal will ask you some questions. Okay?

A All right.

Q Miss Coates, how old are you?

A 20.

Q Have you ever been a juror before?

A No.

Q What section of the City do you live in?

A North Philly.

Q What is your zip code?

A 21.

Q How long have you lived there?

A 13 years.

Q Did you live in another part of North Philadelphia before you moved there?

A 17th and Jefferson.

Q Did you go to a public school in that general area?

A Yeah.

Q Now, Miss Coates, if you were selected as a juror in this case, it would be your function to listen to the evidence and reach a verdict solely based on the evidence. In other words, you would sit in one of the chairs here, listen to the evidence, and reach a verdict based on the evidence.

Would you be able to do that?

A Yeah. I have a very good outlook. I think I can do that.

Q You have a what?

A Very good outlook.

Q When you say "a very good outlook," what do you

mean by that?

A That I can decide on two people's decisions. I always feel there's two sides to every story, instead of just one side to each story.

Q I see.

So then you feel that you can be fair and impartial; is that what you are saying?

A Uh-huh.

Q Now, do you have any kind of conscientious, religious, or philosophical opinions or beliefs that would prevent you from imposing the death penalty?

A No, but I mean it's not really up to me to say if they go to the death penalty.

Q What's that again?

A I don't think they are wrong. I might say they think they wrong, but if I think they right I might be able to say I think they right.

Q Okay.

Now, I'm not asking you whether or not you might think somebody is right or wrong. That would be your own idea as a juror. You would have to listen to what they say.

Now, what I am saying is this: Let's

assume -- you said something about it wasn't your right, something about the death penalty. What do you mean by that?

A I meant that really I don't think it's my decision if I sentence somebody to death or not. I could look at it and I could say it's true, it's not true, right. But I mean it might be up to me, it might not be up to me, right. But I feel it's not up to me to sentence nobody to the death penalty.

Q Now, is that a religious feeling that you have?

A No, it's not a religious feeling, but I believe that if they guilty, my point of view they guilty from what I think, they guilty.

Q Let me see if I understand what you are saying. Are you saying that if you feel they are guilty, they are guilty?

A Right.

Q However, when it comes to sentencing to death, you don't feel that you have the right to do that? Is that what you are saying?

A No, not really, I don't think I have the right to sentence nobody to death. But if I think they guilty, they guilty. And if it consists of going to the death

penalty, I guess they go.

Q Now, if I were to say then that if you did find someone guilty of a certain degree of murder, murder in the first degree, it will be up to you as a juror, no one else, but up to you and other jurors --

A Right.

Q -- to determine whether or not the penalty will either be life imprisonment or death, the question is whether or not you could consider imposing, actually imposing yourself, imposing the death penalty on the defendant.

A Yeah, I can do that.

Q Then, therefore, despite what your personal feelings are you will be able to put them aside and you would then be able to vote for the death penalty in that situation?

A Uh-huh.

Q So you don't have a feeling against doing that?

A No.

Q What did you mean before then? I'm sorry to ask you.

A I just meant that for me, myself, right, I don't know. I don't think that I am supposed to take nobody's

life as far as sending them to the death penalty, right, but if they guilty, they go to jail for life. I mean I would rather send them to jail for life than sentence them to the death penalty.

Q Is that a personal feeling?

A No.

Q How long have you had that feeling?

A For a long time. I would rather sentence somebody to life than to sentence them to the death penalty.

Q You would rather do one or the other. Would that mean then that you would hesitate and find it very difficult to send somebody to death?

A I don't think I would find it difficult. Maybe it might not be difficult under the circumstances that they did what they did and how they did it, right. But I mean if some people do somethings real vulgar, I mean I sentence them to the death penalty. But if they don't do nothing really, really bad, right, I send them to jail for life. But if do something real vulgar, you know, real vulgar, that's really going to hurt somebody, right, I will sentence them to the death penalty.

Q Okay. Fine. I think you have answered that

question.

Now, ma'am, let me ask you this:

If you were selected as a juror in this case, it would be your function to listen to the Court and follow the law that the Court tells you. You find out the facts. In other words, you listen to the evidence. You determine it, but you have to listen to the Court as far as what the law is.

Do you understand that?

A. I have to listen to the Court in order to -- in other words, you are saying that -- how can I say this? You are saying that -- how can I put it? I got to like go by the book of the law?

Q. Yes.

A. That's how you are saying it?

Q. The book of law is basically what I am saying.

A. Yeah, I can go by the book of the law, yeah.

Q. Could you then, ma'am, apply that to the facts? In other words, take the law and apply it to the facts that you would find?

A. Uh-huh.

Q. Now, let us assume that you had your own feeling about what the outcome should be or the facts or the law

should be, not the facts, the law, because you make your own decision on the law. I mean on the facts. I'm getting myself confused.

But let's assume that you feel a certain way the law should be and the Judge tells you the law is something else. Would you accept the law that the Court gives you or would you follow your own opinion?

A I would accept what law he gives me. I mean, I might not like it, but I'll accept it.

Q Now, have you or anyone close to you ever had any kind of an unpleasant experience with the Philadelphia Police?

A No.

Q Have you read or heard anything in relation to the Philadelphia Police or concerning the Philadelphia Police that would in any way prevent you from being fair and impartial in this trial?

A No.

Q Have you read anything about this particular case?

A Not in particular I haven't really read about it, but, you know, how people, we sitting around talking about it and I have overheard conversations.

But I haven't really read up on it from day one to now,
no.

Q But you have heard something about it and you
have read something about it?

A Yeah.

Q Have you heard a lot about it or have you heard
just a little bit about it?

A A little. I ain't heard a lot, you know, but you
know how people be talking among themselves, talking
about how this happened. I really haven't heard a lot
about it.

Q Now, would anything that you may have heard
about or read about in any way affect your ability in
this case to be a fair juror and sit as a juror?

A No.

Q Do you know the defendant?

A No.

Q Have you ever heard his name? Other than what
people have said, have you ever heard his name around?

A Yeah, on the radio, that's all.

Q Have you ever heard his radio reports?

A Some.

Q How long ago have you heard his reporting?

A It's been a while since I have listened to him.

Q Ma'am, do you feel that the fact that you have heard him on the radio and heard his reporting on the radio, do you think that in some way may affect your ability in this case to be fair?

A No, because by me being here, if I continue on the jury, by me being here, if I think he's guilty, I would say he's guilty. But if I don't think he's guilty, I'm saying he ain't.

Q Now, the defendant, Mr. Jamal, will be asking you questions and he will also be asking witnesses questions and he will be addressing the jury and giving openings and closings to the jury. Would the fact that he would be doing that to you if you are selected as a juror, would that in any way affect your ability to be fair either to the Commonwealth or to the defendant?

A No. It might, maybe if me and him, you know, would have to sit down and talk. It wouldn't change how I feel, right, but I mean he can say what he want to say to me. I might tell him what I want to tell him. But still if it come to the point where I think he guilty, you know, me and him sitting down and talking ten minutes, you know, I could like him. But from the trial

if I think he is guilty, I would say he's guilty. He might not like it, but, you know.

Q Ma'am, if you after hearing all of the evidence felt the defendant was guilty, but after hearing the evidence in your opinion the evidence did not show that the defendant was guilty -- do you understand what I am saying?

A If the evidence didn't show that the defendant was guilty? Okay, I understand that.

Q I will start over.

If the evidence showed the defendant was not guilty -- are you following that?

A All right.

Q -- however, you felt he was guilty anyway, would you follow what you felt in your own conscience or would you follow the evidence?

A I think I follow -- no, I follow the evidence.

Q You know you would follow the evidence?

A Yes.

Q Do you presently work?

A Yes.

Q What is the nature of your work?

A I work at Procaccia Brothers, Lawrence and

Patterson. It's a produce plant that works with tomatoes, lettuce and onions, stuff like that.

Q How long have you been working there?

A About three weeks.

Q What did you do before then or did you just get out of school?

A Yes, just got out of school.

Q Are you living at home?

A Yes.

Q What is your father's work or mother's work?

A My mother don't work. I don't know what my father do.

MR. MCGILL: Thank you, Miss Coates.

Mr. Jamal will ask you some questions now.

(Mr. Jackson and the defendant confer.)

BY THE DEFENDANT:

Q Good afternoon, Miss Coates.

A Hello.

Q I'm sure you have heard the Judge, Judge Sabo, say that someone charged with a crime is presumed to be innocent.

Would you agree with that statement?

A Say that again.

Q I'm sure you have heard the Judge here say that someone charged with a crime is presumed to be innocent.

Would you agree with that statement, someone charged with a crime is thought to be innocent?

A Just charged with it, they might be innocent now, yeah.

Q Then you would agree; right?

A Yeah. Just because they charged with it don't mean they did it.

Q Do you believe that policemen or policewomen are more believable than others?

A Most people do, but they lie too. You know, just because they work for the State they feel that they got a little more authority than everybody else, so they will lie too.

Q Have you or a member of your family ever been a victim of a crime?

A No.

Q Did you ever serve on a previous jury?

A No.

Q What has been your personal experience with police?

MR. MCGILL: Objection, Your Honor.

THE COURT: Sustained.

BY THE DEFENDANT:

Q For the record, of course, we all know, but what is your race?

A Black.

Q How far did you go in school?

A 11th.

Q 11th grade.

Do you have any children?

A No.

Q What civic, social, or professional clubs or organizations do you belong to?

A None.

Q Have you ever filed a complaint with the police against anyone?

A No.

(Mr. Jackson and the defendant confer.)

BY THE DEFENDANT:

Q You said you live in North Philadelphia; right?

A Uh-huh.

Q Do you live alone?

A Mother.

Q With only your mother?

A Uh-huh.

(Mr. Jackson and the defendant confer.)

THE DEFENDANT: I have no further questions.

MR. MCGILL: May I have one question, Judge?

THE COURT: Any objection?

THE DEFENDANT: No objection.

BY MR. MCGILL:

Q You had indicated that you would want to hear both sides of the story; is that correct?

A True.

Q The Court would instruct you that the defendant has no need or no obligation whatsoever to put on any testimony at all. So it may just be the Commonwealth, meaning myself, that would put on the evidence and he may not put on any evidence at all. He doesn't have to. The law says he doesn't have to and you should not have any kind of inference, bad inference or any kind of feeling against him for that.

Now, understanding that, would you still want to hear both sides of the story before you could

reach your verdict?

A I prefer to hear both sides of the story.

Q Would you feel that you want to hear both sides of the story even if the Judge would tell you that the defendant does not have to present evidence and that you yourself shouldn't have any kind of bad feeling about that? Would you still want to hear his side of the story before you reached a verdict?

(Mr. Jackson and the defendant confer.)

THE DEFENDANT: Objection. The Judge will decide what rule of law she is to follow.

THE COURT: Will you rephrase that question?

BY MR. MCGILL:

Q Ma'am, even though the Judge tells you that the defense has no burden to prove anything at all, would you still feel it necessary to hear the defense side of the story before you would be able to reach a verdict? Yes or no, be frank.

A Yeah.

MR. MCGILL: Challenge for cause, Your Honor.

(Mr. Jackson and the defendant confer.)

THE DEFENDANT: Can I ask some follow-up questions, Judge?

THE COURT: Go ahead on that point.

BY THE DEFENDANT:

Q Are you able to follow the rule of law, Miss Coates, as instructed by Judge Sabo?

A Uh-huh.

Q Did you understand what he said during the first 17 questions when you were sitting out in the audience?

A I took it, my point of view, the way he said it, the way I understood it.

Q So that if the Judge explained, for instance, what presumption of innocence means --

A Say that again.

Q If the Judge explained that according to the law I'm thought to be innocent, would you agree with that?

MR. MCGILL: Objection, Your Honor.

THE COURT: Rephrase that.

(Mr. Jackson and the defendant confer.)

BY THE DEFENDANT:

Q Miss Coates, if the Judge explained to you that I don't have to put on a defense, would you hold that against me?

A. Sort of.

MR. MCGILL: Challenge for cause, Your Honor.

(Mr. Jackson and the defendant confer.)

THE DEFENDANT: Judge, I would like to finish this inquiry before that challenge.

(Mr. Jackson and the defendant confer.)

BY THE DEFENDANT:

Q. You just said, "Sort of."

We all understand. Okay?

A. You all understand?

Q. Yes.

A. Okay.

Q. My question to you -- I want you to pay attention.

My question to you is: If the Judge directs that I don't have to put on a defense that you are not to have any bad ideas about me just because I don't put on a defense. Could you follow that?

A. Yeah, because I don't have no bad ideas about you now. I don't know if you are guilty. I don't know if you ain't guilty.

Q. But if the Judge told you that according to law I don't have to put on a defense, you wouldn't think I was

guilty if I didn't do that, would you?

MR. MCGILL: Objection, Your Honor.

That's not the answer, whether he is guilty.

THE DEFENDANT: Let me rephrase the question.

(Mr. Jackson and the defendant confer.)

BY THE DEFENDANT:

Q You said that you would like to hear two sides of every story; right?

A Uh-huh.

Q Even though the defense will present witnesses, if the Judge tells you that I don't have to present witnesses, could you follow his direction?

MR. MCGILL: I would object to that as "even though they will present." I think that's an unfair question. It's not the issue.

THE COURT: Will you rephrase your question?

BY THE DEFENDANT:

Q The law is that the defense need not or doesn't have to present witnesses or testimony. Okay? That's the law.

A Can I ask you a question?

Q Can you ask me a question?

MR. MCGILL: I respectfully object.
Your Honor, he is representing himself and he is not yet judge.

(Mr. Jackson and the defendant confer.)

THE COURT: Rephrase your question so she can understand it.

BY THE DEFENDANT:

Q You can't ask me a question, that's the answer. Even though you might wish to hear from me, right, the Judge will tell you that I don't have to present anything. That's according to law. That's what the Judge will instruct you. Would you be able to follow the Judge's instructions and follow it so that you wouldn't hold that against me?

A Yeah.

(Mr. Jackson and the defendant confer.)

THE DEFENDANT: No further questions.

THE COURT: You are excused.

MR. JACKSON: Judge, could we have a moment?

(Mr. Jackson and the defendant confer.)

THE DEFENDANT: Judge, can we see you

at side-bar, please?

(Side-bar conference in the presence of The Court, Mr. McGill, Mr. Jackson and the defendant reported as follows:

MR. JACKSON: His challenge for cause, Judge, when Mr. Jamal asked her the question, he certainly sufficiently rehabilitated whether she could follow the law, that she would not hold it against him.

THE COURT: But she said she would hold it against him, the last question she answered.

MR. MCGILL: Your Honor, there's a challenge for cause on two bases. I think the Court certainly can make a finding as to this too. We have listened, you and I have listened, as well as Mr. Jamal and Mr. Jackson listened to this witness for something like 15 or 20 minutes. As far as I am concerned, this witness is unable to either understand the complexities of the law.

THE COURT: If you want to go back to this question, I misunderstood her last answer.

MR. MCGILL: Even if she did, I'm

pointing out to this Court and I would ask the Court to consider with her contradictory answers, plus her way, and her ability and her expression that you have heard --

THE COURT: I have to assume that her last answer is correct. Do you want to go into that further? I misunderstood. That's what I thought that she had said.

"Would you want to hear from me" and she said yes. I misunderstood his question.

MR. MCGILL: Your Honor, with all due respect, even though I will pursue this area, I just suggest to this Court that Court is not bound simply by an answer.

THE COURT: I know that.

MR. MCGILL: By the full expressions of the witness's responses over the course of these 15 or 20 minutes, this young lady is simply unable to either understand or to function as a juror.

THE COURT: Let's try it again.

MR. MCGILL: You can make that finding.

THE COURT: I know that, but let's find

out.

(End of side-bar conference.)

MR. MCGILL: May I, Your Honor?

THE COURT: Go ahead.

BY MR. MCGILL:

Q Miss Coates, are you with me now?

A Yes.

Q Miss Coates, you had said before -- and we are just trying to understand exactly what you said and how you feel. All right? I'm sorry to keep asking these things.

You had mentioned that you want to hear both sides before you make a decision. Did you say that?

A Uh-huh.

Q You have to say yes or no.

A Yes.

Q Now, Miss Coates, the question I was asking you before that if the Court would say to you that even though the defendant may not put on any evidence at all are you following me? -- no evidence at all about anything at all, then you can't hold that against him. You can't have any bad inference about that if he doesn't put on any evidence at all.

THE DEFENDANT: Objection.

THE COURT: Go ahead.

BY MR. MCGILL:

Q So all you hear is the evidence from the Commonwealth, that's me. Okay? Evidence from me, no evidence from him.

If that were the case in that situation and you feel that you want to hear both sides of the story, would you then be unable really to come to a decision as a juror in this important case because you only heard one side of the story because of what you felt?

THE DEFENDANT: Objection.

THE COURT: Go ahead.

THE VENIREPERSON: Answer the question?

BY MR. MCGILL:

Q Yes, you have to answer.

A No, because I can take from your side. I guess I can take from your side, because really I'm used to listening to two sides to a story.

Q Sure.

A But I mean I can take from your side and put it to him and if he's wrong or right. Let me see how I can

say this? Take your side without his evidence, just your evidence?

Q That's right.

A To find out if he is guilty?

Q Yes.

A Yeah, I can. But I can take your evidence to see if he guilty, right, but without his evidence I mean I feel like I might be lost.

Q You want to hear both sides?

A Yeah.

Q If you are going to make a decision of that importance, you want to make sure you hear both from the Commonwealth and the defense?

THE DEFENDANT: Objection.

THE VENIREPERSON: Right.

BY MR. MCGILL:

Q And even though the Judge may say to you that you are to feel no bad inference at all because he doesn't put on any evidence, you would find it difficult because you didn't hear anything from him?

A It would be difficult.

THE DEFENDANT: Objection, Judge.

Can I see you at side-bar, Judge?

THE COURT: Overruled.

THE VENIREPERSON: I would say he's guilty or not if your evidence is true. But because he doesn't have evidence, he might have some evidence to prove that he is not guilty. Right? And if you don't show him evidence to prove that he is not guilty, I can only go by your evidence to prove that he is guilty.

BY MR. MCGILL:

Q That's correct.

A Does that sound right?

Q I think I understand what you are saying, but what I want to say, Miss Coates: Would you find yourself unable to make a decision of such importance if you were selected as a juror, not hearing from the defendant's side, since you want to hear from both sides?

A Would I find it difficult?

Q Would you be unable to come to a decision because you do not hear anything from his side and therefore hold it against him?

A I wouldn't hold it against him, but I think that he should have some kind of evidence on his behalf. Even if he did it or not, but if he did it, he still

should have some evidence to uphold his behalf, right. But I can't judge if he's guilty or not just coming from you.

Q You can't judge that?

A No.

MR. MCGILL: Challenge for cause,
Your Honor.

(Mr. Jackson and the defendant confer.)

BY THE DEFENDANT:

Q Miss Coates, just relax.

Do you understand that the State, the Commonwealth must prove guilt beyond a reasonable doubt? Do you understand that?

You didn't hear me?

A Say it again.

Q Do you understand that the Commonwealth must prove guilt beyond a reasonable doubt? And if the evidence does not prove it beyond a reasonable doubt, could you decide not guilty?

A Yeah.

Q You heard what Mr. McGill said to you about what the Judge may say. But the Judge will instruct you, tell you before the trial begins that I have a right not

to take the stand or present evidence.

Can you hold that against me if I don't do that?

A. No.

Q. If I decide not to do that?

A. No.

Q. If the Commonwealth has not proven its case beyond a reasonable doubt, you wouldn't hold that against me, would you?

MR. MCGILL: Objection.

THE COURT: I will let her answer that.

Do you understand the question?

THE VENIREPERSON: I got to answer the question anyway.

THE COURT: Would you ask her that question again?

BY THE DEFENDANT:

Q. If the Commonwealth has not proven its case beyond a reasonable doubt, you wouldn't hold that against me, would you?

A. In other words, you are saying if he proved that you're guilty without you showing evidence, would I hold that against you? Is that what you are saying?

Q Okay.

A No.

(Mr. Jackson and the defendant confer.)

BY MR. JACKSON:

Q If you were accepted as a juror and if the Judge orders you as a juror to disregard your personal feelings or desires or wants and follow the law as he instructs you, would you be able to follow his instructions?

A Uh-huh, yes.

Q Yes?

A Yes.

(Mr. Jackson and the defendant confer.)

THE DEFENDANT: No further questions.

MR. MCGILL: Challenge for cause.

THE COURT: Denied.

MR. MCGILL: Would Your Honor consider two bases or has Your Honor made his decision?

THE COURT: See me at side-bar.

(Side-bar conference in the presence of The Court, Mr. McGill, Mr. Jackson and the defendant reported as follows:

MR. MCGILL: Your Honor, there are two

bases: One is that even though she answered the question that she could set aside her feelings and follow the law when she was specifically asked about the law. The area that she seemed to have a problem with was when we were asking her directly, would you be able to decide a case where you only heard from the Commonwealth -- basically that was the question -- and the defense offered no testimony in as much as you wanted to hear both sides. She started to say, yes, she could, and then as she went on and thought about it, "I heard from you," and then she looked over at Mr. Jamal, "and I didn't hear from him at all," she said, "No, I couldn't make the decision."

I said, "Are you saying you can't make the decision?"

I wanted to make sure I understood those words.

"Yes," she said, "yes, I can't," like that. That, Your Honor, is one thing.

Now, the questions that Mr. Jamal had asked her elicited what arguably could be viewed

as something contrary, but I think the main point is that this underlines, number one, her inability to grasp the issues or the law. I think Your Honor can be in a position, and I would respectfully say in some other courtrooms it's viewed as rule one where a witness appears to be simply not intelligent enough, not able to understand, so confused about what is going on as to simply not be a fair juror for either side, something that could hurt us as well as hurt the defense, the Court in its power can make a challenge for cause or sustain a challenge for cause. Either do it on that point or on the point where she specifically told me, "I can't make a decision if there is no evidence from the other side."

THE DEFENDANT: Judge, can I respond to that?

THE COURT: Go ahead.

THE DEFENDANT: It seems very clear on the last several questions, the last two questions I asked, she interpreted that, analyzed it, and came up with something which

wasn't my intent in the question. But I think it was very clear that if the Commonwealth showed evidence that I was guilty, right, and I didn't present any evidence, would she still be a fair, impartial juror, et cetera. She said, yes, you know, she would not hold that against me. I think it's very clear.

Now, Mr. McGill is saying that she's not the most articulate juror in the world, but we are not looking for articulation. We are looking for honesty and impartiality.

MR. JACKSON: I would just like to add one other thing. Mr. McGill suggested that she is confused about the law. Mr. McGill deliberately said that the Judge may instruct you that Mr. Jamal doesn't have to present a defense. Your Honor knows that you must instruct her. That's the source of the confusion where he is saying what the law may be. That is the law.

MR. MCGILL: I don't think that's the source of any confusion. If that was said, it was a misstatement. I would agree that's a

misstatement. But I think her main problem was understanding what it was all about.

MR. JACKSON: But the point is her interpretation of his misstatement.

THE COURT: Can we agree on a question to ask her and see what she comes up with?

MR. JACKSON: Our position is you made a ruling. You have denied it on her last response. If he has other questions, then fine. Her last response is she would follow your instructions and disregard her personal feelings. She said that she wanted to hear from him, but she's willing to disregard what she wants and follow your instructions. That's where we are. That's where we are right now. Unless he has additional questions, it seems to me that Your Honor can rule.

MR. MCGILL: I think, of course, Your Honor could have the question asked, but I will stand on the record as it is.

THE COURT: The problem I have with the record, when you ask her questions, she says one thing. When he asks questions, she says

another thing. That's my problem.

MR. MCGILL: That's where the confusion is.

MR. JACKSON: Your Honor, we were trying to object when he was deliberately misstating the law. He was deliberately misstating the law and asking her to interpret it.

THE COURT: I don't think "may" or "must" when he says "may," he wasn't quite sure whether he is going to present evidence or not, but he's assuming.

MR. JACKSON: Mr. McGill was saying, well, the law, the Judge may tell you that he doesn't have to present evidence.

THE COURT: Is that what you said?

MR. MCGILL: I don't remember what I said. Let me restate the question to her.

THE COURT: Restate it without the "may" and put the "must" in once and for all.

Let's go.

(End of side-bar conference.)

(Mr. Jackson and the defendant confer.)

BY MR. MCGILL:

Q Miss Coates, I am going to ask you a question again.

The Court will instruct you that the defendant does not have to put on any defense whatsoever and that he doesn't have to say a thing, just sit down there and let me do everything. Do you understand that

A Yes.

Q By the way, do you feel that you might have some difficulty during the course of the trial if you sat as a juror understanding the proceedings or the law of the Court?

A No.

Q Good.

Now, if the Court would instruct you that he does not have to put on any evidence at all -- yet you had initially told us and told me a few times that you want to hear from both sides; correct?

A Right.

Q Now, the question is this: If the Commonwealth presents evidence and the defense doesn't present anything at all and the Judge gave you the instruction that I mentioned, you would then be in a position of

having to make a decision on whether he's guilty or innocent solely on what the Commonwealth presented.

Are you with me?

Now, on those circumstances, based upon the fact that you said you wish or you wanted to hear from both sides, is it accurate to say or could you or would you be able to make a decision as to his guilt or innocence only hearing from the Commonwealth and nothing at all from the defense?

A. Yeah. I mean I could make the decision, right, but --

Q. Do you feel that you would be unable to be fair and impartial maybe?

A. Yeah.

Q. Because you hadn't heard --

A. Yeah, I think I would be unfair.

Q. You would be unfair because you haven't heard from the defense; is that what you are saying?

A. Right, yeah.

Q. Are you firm in that belief, ma'am?

A. Uh-huh.

MR. MCGILL: Thank you.

(Mr. Jackson and the defendant confer.)

MR. MCGILL: Challenge, Your Honor.

She couldn't be fair because she doesn't --

MR. JACKSON: Your Honor, we don't need speeches from counsel.

THE COURT: Mr. McGill, please.

(Mr. Jackson and the defendant confer.)

BY THE DEFENDANT:

Q Miss Coates, we have heard you say that you want to hear two sides of the story several times now. But if the Judge orders you as a member of the jury to disregard your personal feelings, desires, or wants and follow the law, would you be able to follow his instructions?

A Yes.

Q Yes?

A Yes.

Q Now, if the State does not prove its case, there would be no need to present a defense. Do you agree with that?

A Yes.

Q So what you think or what you feel about the law is not controlling in this case, because the Judge will tell you what the law is.

Now, would you be able to put aside

your personal feelings and follow the instructions of the Court?

A. Yes.

THE DEFENDANT: No further questions.

BY THE COURT:

Q. So that I can understand what you are saying: If you heard only from the Commonwealth and the defense elected not to present any evidence or if the defendant himself didn't testify, are you telling the Court that you could make a decision as to his guilt or innocence even without hearing from him or his side?

A. I can make a decision, but the decision probably wouldn't be right because he ain't defending him own self.

Q. In other words, you are saying then that if he doesn't present any evidence you might find against him even though the Commonwealth has not convinced you of his guilt beyond a reasonable doubt?

A. Say that again.

Q. I said, do you mean by that that you would find him guilty because he did not take the stand or produce any evidence on his own defense even though in your own mind you might feel that the Commonwealth has not proven

him guilty beyond a reasonable doubt?

A No.

Q You would not convict him?

A No.

Q Exactly what do you mean? Can you tell me in your own words what you mean by what you have said?

A All right. If he shown me evidence that he's guilty, right, I would go with his evidence to say that he is guilty. I will have to use his evidence to say that he is guilty, right, but if he doesn't show no evidence or to say if he is not guilty, all I can do is go by what he say if he doesn't show me no evidence to say that he is not guilty and he show me evidence that I believe that he is guilty. All I can do is go by his evidence.

MR. MCGILL: Your Honor, I would challenge for cause.

(Mr. Jackson and the defendant confer.)

MR. JACKSON: Can we see you at side-bar, Your Honor?

(Side-bar conference in the presence of The Court, Mr. McGill, Mr. Jackson and the defendant reported as follows:

MR. MCGILL: Judge, if there has ever been an example of someone who does not understand what is going on or, secondly, the point is that she has made herself very consistent in that she cannot come up with what she believes to be a fair decision unless she hears from the defense. That is what she is saying.

THE DEFENDANT: Mr. McGill has given a hypothetical.

THE COURT: The last question she said is if she heard from you -- this is her own statement. I asked her to explain in your own words. She said if she heard your side of the story and you convinced her he was guilty, she would find him guilty. That's what she said.

MR. MCGILL: That's right, that's what she said. Your question was not whether or not.

THE COURT: I asked her in her own words to explain to me what she meant, because I didn't understand what she was getting at. She said if she only heard from you and you convinced her that he was guilty and she didn't

hear anything from him, then she would find him guilty.

MR. JACKSON: That is what the law is.

MR. MCGILL: That is not the issue that we are discussing, Your Honor. The point is if you ask this question, you yourself, she will answer the same way I am convinced.

If you only heard from the Commonwealth in this case, if you only have heard from me and you haven't heard anything at all from Mr. Jamal, would you be able to make a fair decision? If you ask her that, she will say no.

THE DEFENDANT: Judge, can I interject for a moment? I understand what Mr. McGill is saying, but the point, I guess, is she's answering based on some logical feelings that if she didn't hear anything from me she would think that wasn't fair.

Now, obviously what Mr. McGill is not saying is that I will present a defense and she will hear from me.

MR. MCGILL: That's not the question.

THE DEFENDANT: That's not the

question, but I think that's a possibility. The point is if you instructed that jury that I don't have to present a defense, that I can sit right there at that table and not say a word --

THE COURT: I have already told her that. I think she knows that.

MR. MCGILL: Ask her the question that I asked, Judge. You will see the answer, which means she can't be fair.

MR. JACKSON: Judge, I think what you have done, we can decide what fairness is. If you asked her that if she heard from the prosecution and if the prosecution convinced her -- these were her own words, nobody put those words in her mouth -- if the prosecution convinces me, then I can find him guilty.

That's a fair juror.

THE COURT: She has answered the question. No matter how you stretch it, I can't grant the challenge for cause.

MR. MCGILL: Judge, would you at least ask her that one question I asked?

THE DEFENDANT: I think it's repetitive.

It's been done.

THE COURT: How many times?

MR. MCGILL: Then I will ask for a challenge for cause on her inability to understand.

THE COURT: The challenge for cause is denied. I think she understands, Mr. McGill.

MR. MCGILL: Whatever you think, Judge.

(End of side-bar conference.)

THE COURT: Commonwealth's choice.

MR. MCGILL: Peremptory, Your Honor.

THE COURT: You are excused. Thank you very much.

COURT OFFICER: 340, Dorothy Snyder.

...DOROTHY F. SNYDER...

BY THE DEFENDANT:

Q Good morning, Miss Snyder.

A Good morning.

Q My name is Mumia Abu-Jamal. I'm the defendant in this case.

This is Mr. McGill for the prosecution

This is Anthony Jackson, backup

counsel.

This is Judge Sabo.

THE COURT: Mr. Jamal, go into the hardship, please.

THE DEFENDANT: I sure will.

THE COURT: Forget the introductions. I have already introduced everybody.

BY THE DEFENDANT:

Q Judge Sabo has asked several questions of the panel when they were in the back. You answered that a hardship would prevent you from serving on this jury. Would you explain?

A I'm just starting a new job. It will start next week and I don't know if I would have it if I had to be on the jury.

Q Do you understand that if you were accepted as a juror on this case you might be sequestered, that is, locked in, for about two or three weeks?

A Yeah, I understand that.

Q That will cause a problem for you?

A Yeah, it would with the new job. I mean I haven't even started it yet.

MR. MCGILL: Your Honor, I have no

objection that Mrs. Snyder be excused.

THE COURT: You are excused. Thank you very much.

(Mr. Jackson and the defendant confer.)

COURT OFFICER: 76, Carol Coyle.

...CAROL A. COYLE...

BY MR. MCGILL:

Q Good afternoon. Is that Miss or Mrs.?

A Miss.

Q Miss Coyle, good afternoon.

A Good afternoon.

Q What section of the City are you from?

A South Philadelphia.

Q What is the zip code?

A 45.

Q Now, Miss Coyle, you didn't answer any questions
Would that be accurate?

A Yes.

Q Are you presently employed?

A Yes, I am.

Q What is the nature of your work?

A I'm a Post Office clerk.

Q How long have you worked there?

A 17 years.

Q Are you in a supervisory status at all?

A No.

Q Who makes up your household?

A Pardon me?

Q Who makes up your household?

A Just myself.

Q Miss Coyle, have you lived most of your life in South Philadelphia?

A Yes, sir, all my life.

Q Have you ever been a juror before?

A No.

Q If you were selected as a juror in this case, it would be your function to listen to the evidence and reach a verdict solely based on the evidence. You would be seated in one of those chairs over here.

Would you be able to do that?

A Yes.

Q Judge Sabo will tell you at the end of the case what the law is in a much longer way than he had told you earlier when you were sitting back there as a panelist.

Would you be able to apply the law

that the Judge says to the facts that you find if you were selected as a juror in this case?

A I think so.

Q Now, do you have any conscientious, religious, or philosophical opinions or beliefs that would prevent you in the proper case from imposing the death penalty?

A No.

Q If after listening to all of the evidence you believe in accordance with the law that the defendant has been proven guilty of murder of the first degree, would you be able to return such a verdict?

A Yes.

Q Now, the defendant himself will be asking you questions much like I, the prosecutor. The defendant himself will be asking you questions. He will be giving you an opening here. He will be closing to you, talking to you constantly. In fact, he will even be questioning you as a juror.

Would the fact that he would be doing all of this, would this in any way prevent you from being fair to the Commonwealth in this particular case?

A I don't believe so.

Q You have read and heard something about this

case as indicated by the fact that only one person raised their hand before; is that correct?

A Yes.

Q Would you be able to set aside anything that you have heard and read about this case and reach a verdict solely based on the evidence?

A I think so.

Q Now, the Court has already instructed you on this, but that an individual who takes the witness stand because of his occupation, whether he's a clergyman a judge, a lawyer, a policeman, whatever he might be, does not have any special credibility because of his occupation. It is for you to make a judgment on the witnesses as they approach the witness stand and sit and testify.

Keeping that in mind, would you then be able to listen to all witnesses fairly and impartially despite their age, their race, their occupation or whatever in reaching your verdict?

A Yes.

Q Would you then be able to listen to a police officer as well as a civilian who may testify to the same set of facts differently and make a judgment in

your own way in terms of the evidence in accordance with the law fairly and impartially to both the Commonwealth as well as the defendant there?

A I think so.

MR. MCGILL: Thank you very much.

Mr. Jamal will ask you some questions.

(Mr. Jackson and the defendant confer.)

BY THE DEFENDANT:

Q Good afternoon, Miss Coyle.

A Good afternoon.

Q Do you believe that policemen or policewomen are more believable than others?

MR. MCGILL: Objection.

THE COURT: Sustained.

BY THE DEFENDANT:

Q Do you believe I must be guilty of something or else I wouldn't be on trial?

A No.

Q I'm sure you were one of the jurors in the back who said you had read something about this case.

A Yes.

Q Can you tell me what you have read about the case?

A Just Daily News, just what they reported.

Q Based on what you have read, what do you know about the case?

MR. MCGILL: Objection, Your Honor.

THE COURT: Sustained.

BY THE DEFENDANT:

Q Are you or any member of your family or close friends -- I'm sorry, let me redo that.

What civic, social, or professional clubs or organizations do you belong to?

A Nothing, just the Catholic church.

Q Have you ever filed a complaint with the police against anyone?

A No.

Q For the record could you state your race?

A Pardon me?

Q For the record could you state your race?

A I'm Caucasian, white.

(Mr. Jackson and the defendant confer.)

BY THE DEFENDANT:

Q You said that you have read about this case in the Daily News; right?

A Yes.

Q What is it that you remember about what you read

MR. MCGILL: Objection, Your Honor.

THE COURT: Can you rephrase that question?

(Mr. Jackson and the defendant confer.)

BY THE DEFENDANT:

Q Did you hear anything on the radio or see anything on TV about this case?

A No.

Q What is it then that you remember reading in the Daily News about this incident?

A A police officer was killed.

MR. MCGILL: I'm going to object, Your Honor.

THE COURT: Can't you rephrase that question?

(Mr. Jackson and the defendant confer.)

BY THE DEFENDANT:

Q Miss Coyle, do you remember reading about when it happened?

A I know it was a long time ago.

Q Do you remember reading about where it happened?

A No, I don't, honestly.

Q Do you remember what happened based on what you read?

MR. MCGILL: I would object, Your Honor.

THE COURT: Just a minute.

BY THE COURT:

Q You heard me tell the entire jury panel when they were in here that I wanted you to decide this case solely on the testimony that you hear in this courtroom and from no outside sources whatsoever.

Now, can you follow my instructions on that point of law and not allow whatever you may have read in the newspapers to influence your decision in any way? Can you do that?

A Yes.

Q Is there anything about what you have read in the newspaper that would prevent you from giving this defendant a fair and impartial trial?

A No.

(Mr. Jackson and the defendant confer.)

BY THE DEFENDANT:

Q Is there anything that you have read that you may have thought is a fact that can't be contradicted by

any evidence?

A No.

(Mr. Jackson and the defendant confer.)

THE DEFENDANT: No further questions,
Judge.

MR. MCGILL: I have just one
question, Your Honor, that I should have asked
before.

THE COURT: Do you have any objection?

(Mr. Jackson and the defendant confer.)

THE DEFENDANT: No objections.

BY MR. MCGILL:

Q I should have asked this before. You don't
have any relation at all, any contact at all with our
office, did you?

A Your office?

Q Yes.

A No.

Q The only reason that I ask is your name is Coyle.

A Yes.

Q That's why I wanted to know.

A No.

MR. MCGILL: Thank you.

Your Honor, Miss Coyle is acceptable to the Commonwealth as Juror No. 1 in this case.

THE DEFENDANT: Peremptory challenge.

THE COURT: You are excused. Thank you very much.

COURT OFFICER: 89, Jennie Dawley.

...JENNIE B. DAWLEY...

THE COURT: Defense.

BY THE DEFENDANT:

Q Ms. Dawley, could you tell us what neighborhood or what part of town you live in?

A I beg your pardon?

Q What part of town do you live in?

A What part of town I live in? Southwest Philly.

Q How long have you lived in Southwest Philadelphia?

A Since 1960.

Q Are you employed, Miss Dawley?

A I beg your pardon?

Q Are you working?

A Am I working?

Q Yes, ma'am.

A No, I am not.

Q You are retired I presume?

A Yes.

Q Do you believe that policemen or policewomen are more believable than others?

MR. MCGILL: Objection, Your Honor.

THE COURT: Sustained.

BY THE DEFENDANT:

Q Have you ever served on a jury previously?

A Never.

Q Have you read about this case in the newspaper?

A No, because I was out of town when it happened. Whenever it was, I wasn't around here.

Q If a police officer and a private citizen both testify about the same set of facts, the same thing, but each offers a different version of those facts, would you be predisposed to believe a police officer over the private citizen?

A I don't know.

Q Pardon?

A I don't know.

Q You don't know.

Did you understand the question?

MR. MCGILL: Objection, Your Honor.

think she did answer it appropriately.

THE COURT: She said she didn't know.

(Mr. Jackson and the defendant confer.)

BY THE DEFENDANT:

Q Miss Dawley, you said you didn't read about the case.

A You're not speaking loud enough.

Q You said you didn't read about the case; right?

A Well, I wasn't in the City, I couldn't have.

(Mr. Jackson and the defendant confer.)

BY THE DEFENDANT:

Q You must have heard something, because when the Judge --

A I was in another state at that time for months.

Q Did you hear the Judge ask was there anyone in here who didn't know about the case?

A Yes, I heard him.

Q You do know about the case?

A No. What I heard today, that's all I know about it.

(Mr. Jackson and the defendant confer.)

BY THE DEFENDANT:

Q Miss Dawley, before you were retired, could you

tell us what you were doing for a living, what your job was?

A What I was doing for a living?

Q Yes, ma'am.

A I was a common laborer.

Q Can you tell us who else lives with you?

A Yes. Who is living with me now?

Q Yes, ma'am.

A My husband.

(Mr. Jackson and the defendant confer.)

BY THE DEFENDANT:

Q Is there anything about how I look to you that offends you or turns you off?

A No. You look like people to me, that's all.

Q Can you tell us what kind of work your husband did, what kind of work your husband did or does?

A Well, let's not bring him in. Okay? Let it rest like that. He's not here.

(Mr. Jackson and the defendant confer.)

BY THE DEFENDANT:

Q Can you tell us what civic, social or professional clubs or organizations you belong to?

A I beg your pardon?

Q Could you tell us what civic, social or professional organizations or clubs you belong to?

A Yes, the Club of Jesus Christ. That's the only one I belong to.

Q Can you think of any reason why you can't be a fair and impartial juror?

A Any reason what?

Q Why you can't be a fair and impartial juror or member of this jury.

A People have to do what they want to do, that's all.

Q But can you think of any reason why you could not?

A I still say the same thing, people have to do what they want to do.

Q I don't understand your answer.

Is there any reason why you can't be fair and impartial?

A I'm always fair with everything.

(Mr. Jackson and the defendant confer.)

THE DEFENDANT: No further questions.

BY MR. MCGILL:

Q I have to ask you some now, Mrs. Dawley. Can

you hear me?

A I'm listening.

Q Now, Mrs. Dawley, let me ask you this: If you were selected as a juror in this case, it would be your function to sit in one of these chairs and listen to the evidence and reach a verdict solely based on the evidence. Mrs. Dawley, would you be able to do that?

A I suppose I could.

Q Do you have any kind of conscientious or religious --

A No.

Q -- philosophical --

A No. I'm just plain old me.

Q Okay.

A That's all.

Q Let me finish the question.

Do you have any kind of religious or social or personal feelings against capital punishment that would prevent you in the proper case of imposing that penalty if it is appropriate?

A No.

Q Did you understand my question?

A Yes.

Q So if after hearing all of the evidence, Mrs. Dawley, you were convinced in accordance with the law that the Court gives you and the facts that you hear and decide that the defendant was guilty or was proven guilty of murder in the first degree, would you be able to return such a verdict?

A Yes, if I believed so.

Q In the same vein, if after that you felt in listening to all of the evidence and in accordance with the law that the Court gives you, you felt that this case was appropriate for the imposition of the death penalty, would you be able to return such a verdict?

A I still say yes.

Q I have to ask you these things.

Now, Mrs. Dawley, would you be able to listen to all of the witnesses fairly and impartially despite their occupations, their ages, their backgrounds or their appearance and listen to all of them and be fair and impartial in listening to their testimony?

A Yes.

Q For example, would you be able to listen to the testimony of a witness who may have a criminal record

and would you be able to listen to that witness fairly and impartially like you would listen to all witnesses and set aside the fact of the background of the individual and weigh the testimony of that witness as you honestly and truthfully believe?

A I could, I could do that.

Q I believe you could.

A Because people are people.

(Mr. Jackson and the defendant confer.)

BY MR. MCGILL:

Q Have you or anyone close to you, Mrs. Dawley, ever had an unpleasant experience with the Philadelphia Police that would in any way make you angry at them so that you couldn't be fair to the Commonwealth in this case?

A No. I don't know any policemen.

Q What is your zip code?

A 43.

Q You may have answered this, so excuse me if I ask you again. How long have you lived in Southwest Philadelphia?

A Since 1960.

Q Did you answer that before?

A. Yes.

Q. Before 1960 did you live in this general area or somewhere else?

A. Well, no. I lived a few blocks above Market Street.

Q. Mrs. Dawley, is there any reason that you can think of, anything that you may have heard or read or feel, that would in any way prevent you if you were selected as a juror in this case to be fair and impartial at this trial, fair to the Commonwealth as well as the defendant? Could you be fair?

A. Yes, of course, I could.

MR. MCGILL: I believe you could.

Thank you very much, Mrs. Dawley.

THE COURT: Defense.

(Mr. Jackson and the defendant confer.)

THE DEFENDANT: Judge, can I ask some additional questions?

THE COURT: Do you have any objection to any additional questions?

MR. MCGILL: No, Your Honor.

THE COURT: All right.

BY THE DEFENDANT:

Q Mrs. Dawley, the law is that I am not bound to present any witnesses or to present a defense. I could very well just sit there at the table throughout the whole trial and not say anything. Would you hold that against me?

MR. MCGILL: Your Honor, I would object to that.

THE COURT: Will you rephrase that question?

(Mr. Jackson and the defendant confer.)

BY THE DEFENDANT:

Q Mrs. Dawley, the Judge will tell you that I am under no obligation to present a defense. Would you be able to follow that instruction from the Judge or would you hold that against me if I didn't present a defense?

MR. MCGILL: I would object to that, Your Honor. Your Honor has asked the question as to law.

THE COURT: Put it all in one. That's two questions. You are giving it in two questions. Make it just one question.

(Mr. Jackson and the defendant confer.)

THE COURT: Could I see you over here at side-bar?

(Side-bar conference in the presence of The Court, Mr. McGill, Mr. Jackson and the defendant reported as follows:

THE COURT: Maybe we can cut through this. I am trying to find out where you stand so we can cut through this. What's the problem?

MR. MCGILL: I am objecting to questions, Judge, not because of the phrasing, but because you have gone into the law. The reason I went into it before on the first juror is because she herself initiated it by saying I would like to hear both sides. She said I would like to hear from both sides.

She is indicating nothing at all. To go into this business about law at this stage I find it irrelevant, because Your Honor has asked the question. Unless she had said something in her testimony either to myself or to Mr. Jamal earlier that will indicate that she has had something of a problem here, all of

this is improper. I thought it might have been something that he forgot, even about a fact question instead of her feelings on the law. That's why I object.

MR. JACKSON: Judge, I only say that she has given some indication, of course, about her association with Jesus Christ and people are people. The question is, is she going to be making independent judgments or is she going to follow her conscience.

THE COURT: Why don't you just ask her? Why don't you ask her if she would be able to follow the law?

MR. JACKSON: I think the crucial point, he can ask generally, of course, would she be able to follow the law. That's one question. But I think it's that question in particular that Mr. Jamal is concerned about.

THE COURT: Why didn't you ask that before?

MR. JACKSON: We just forgot.

THE COURT: I thought the agreement was that we weren't going to ask that question, that

I was going to ask that question.

MR. MCGILL: That's the point, unless it comes up.

THE COURT: Unless somehow it comes up. That's why we went back in-chambers before. I said I would ask that question of the entire panel.

MR. JACKSON: But you didn't ask it. That's the point, you didn't ask that.

MR. MCGILL: He asked about the law.

MR. JACKSON: But you didn't ask that question.

THE COURT: The question that I am thinking about is the question dealing with the fact that he is sitting here now --

MR. JACKSON: That's what you said.

THE COURT: That's right. It's a different question.

Well, if he can rephrase it and just ask the one question. You asked two questions in one question. Stick to one question.

(End of side-bar conference.)

(Mr. Jackson and the defendant confer.)

BY THE DEFENDANT:

Q Mrs. Dawley, the Judge will tell you that I'm under no obligation to present a defense. Would you be able to follow the instruction from the Judge?

A From the Judge?

Q Yes.

A I suppose so.

Q The Judge will tell you that I'm under no obligation to take the stand. Will you be able to follow that instruction from the Judge?

A Will you say that again?

Q Another thing the Judge may tell you is that I'm under no obligation to take the stand. Would you be able to follow that instruction from the Judge?

A If you don't take the stand?

Q Yes, ma'am.

A I suppose so.

THE COURT: You are first.

THE DEFENDANT: Acceptable.

MR. MCGILL: Your Honor, Mrs. Dawley is acceptable to the Commonwealth as Juror No. 1

THE COURT: You have been selected as Juror No. 1. You will sit in this first seat

there. That is in the first row on the extreme left that has the number one marked on it.

I just want to caution you though, once again, please do not discuss the case with anyone, especially members of your own family. In particular, I don't want you to discuss it with your fellow jurors during the course of the trial, not until I send you into the jury room to deliberate on your verdict.

You will be given further instructions from the court crier as to when you will appear back. I just want to caution you once again, please do not read anything in the newspaper about the case or hear anything on the radio or television about it.

Will you do that for me, please?

JUROR NO. 1: Sure I will do that.

Even if I read something, it ain't anyway no one would ever know it. When you read the paper, you do not know what you are going to come across. You mean stop reading?

THE COURT: I don't want that to affect your decision in this case in any way.

All right? I want you to decide this case solely on the evidence that you hear in this courtroom and not what you may read in the newspaper.

JUROR NO. 1: I wouldn't.

THE COURT: Okay.

I am afraid we are going to have to break at this time. I have post-trial motions that I have to take up and everyone is here ready for it.

We will adjourn to 9:30 tomorrow morning.

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(Adjourned.)

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.



Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge